FILED

98 19 06 MAY 27 1999

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FRANK A. ROMANO;
MARIA A. ROMANO,

Petitioners,

v.

WILLIAM BIBLE, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANK A. ROMANO
MARIA A. ROMANO
Pro Per
1900 E. FLAMINGO ROAD
SUITE 296
LAS VEGAS, NV 89119-5116
(702) 699-9000

BECKER GALLAGHER LEGAL PUBLISHING, INC., CINCINNATI, OHIO 800-890-5001

13158

QUESTIONS PRESENTED

Whether corrupt individuals acting in such a manner as to amount to malfeasance, to wit, hiding and covering up material evidence of non-culpability of criminal conduct, under color of state law, are shielded by the doctrine of absolute immunity, thus, resulting in a denial to an individual of his constitutional right to due process?

Whether corrupt individuals acting in such a manner as to amount to malfeasance, to wit, hiding and covering up material evidence of non-culpability of criminal conduct, under color of state law, are shielded by the doctrine of absolute immunity, thus, resulting in a denial to an individual of his constitutional right to equal protection under the law?

Whether the doctrine of absolute immunity can be imposed by a court by reason of the financial impact upon an industry to the derogation of individual constitutional rights to due process and equal protection under the law?

PARTIES TO THE PROCEEDING

Petitioners

Frank A. Romano and Maria Romano.

Respondents

William Bible; Steve Ducharme; C. Brian Harris; Deborah P. Griffin; Augie Gurrola; William Curran; Bob J. Lewis; Gerald Cunningham; Thomas Roach; Dennis Amerine; John O'Rielly; Kenneth R. Gragson; Betty B. Vogler; Nevada Gaming Control Board; Nevada Gaming Commission; Frankie Sue Del Papa, Attorney General of the State of Nevada.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

ARGUMENT FOR GRANTING WRIT 7

ARGUMENT 1 7

ARGUMENT 2 15

ARGUMENT 3 20

CONCLUSION 21

APPENDIX

Appendix A
Ninth Circuit Court of Appeals Opinion, 2/26/99 . . . . . 1a

Appendix B
District Court Judgment in a Civil Case, 8/6/97 . . . . . 16a

Appendix C
District Court Complaint for Damages for Violation of Civil Rights (42 U.S.C. § 1983), 4/16/97 . . . . . 20a

Appendix D
District Court Transcript of Telephonic Hearing on Defendants' Motion to Dismiss, 8/4/97 . . . . . 67a

Appendix E
Nevada Revised Statues, Chapter 463, Licensing and Control of Gaming 92a

TABLE OF AUTHORITIES

Cases — Page

Baccari v. State of Nevada,
624 P.2d 1008 (1981) 12

Bivins v. Six Unknown Fed. Narcotics Agents,
403 U.S. 410 (1971) 16

Brady v. Maryland,
373 U.S. 83 at 87 (1963) 12, 13

Buckley v. Fitzsimmons,
509 U.S. 259 (1993) 17, 18, 19

Butz v. Economou,
438 U.S. 478 (1978) 16, 17, 20

Harlow v. Fitzgerald,
457 U.S. 800 (1982) 10, 16, 17

Home Telephone and Telegraph Company v. City of Los Angeles,
227 U.S. 278 15

Howard v. State,
95 Nev. 580 P.2d 214 (1979) 12

Imbler v. Pachtman,
424 U.S. 409 (1976) 19

Mitchell v. Forsyth,
472 U.S. 511 (1985) 17

Pennhurst v. Haldeman,
465 U.S. 89 (1984) 8

People v. Vilardi,
556 N.Y. S.2d 518 (1990) 13, 14

Roberts v. State of Nevada,
23217 Nev. Sup. Ct. September 28, 1994 14

Scheuer v. Rhodes,
416 U.S. 232 (1974) 8

Strump v. Sparkman,
435 U.S. 349 (1978) 19

United States v. Agurs,
427 U.S. 97 (1975) 12, 13

United States v. Bagley,
473 U.S. 667 (1984) 13

Statutes

28 U.S.C. § 1254 1
28 U.S.C. § 2106 1
29 U.S.C. § 1254 1
42 U.S.C. § 1983 . . . . . *passim*
Federal Rule of Civil Procedure 12, *et seq.* . . . . . *passim*
Nevada Revised Statues 41.031.3 . . . . . 3, 8, 10
U.S. Const., Eleventh Amendment 2, 9, 15
U.S. Const., Fourteenth Amendment 2, 15

Other Authorities

Nevada Constitution Article I Section 8 14

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 169 F.3d 1182. A copy of the Opinion is included in the Appendix at Appendix A at 1a. The transcript of the District Court for the District of Nevada is included in Appendix D at 67a. The District Court granted respondents motion to dismiss under F.R.Civ.P. 12(b)(6), which alternatively sought either judgment on the pleadings under F.R.Civ.P. 12(c) or summary judgment under F.R.Civ.P. 56 on August 4, 1997 by Minute Order and is included in Appendix B at 18a. The District Court ordered entry of final judgment on August 4, 1997, which is included in Appendix B at 16a. In its ruling, the District Court failed to identify whether the motion to dismiss was granted under F.R.Civ.P. 12(b)(6), 12(c) or 56.

JURISDICTION

The Order of the District Court from which an appeal was taken to the Court of Appeals was a final order, and jurisdiction of the Court of Appeals was proper under 29 U.S.C. § 1254. The United States Court of Appeals for the Ninth Circuit issued it opinion on February 26, 1999.(App. A).[1] This Petition for Writ of Certiorari is filed within 90 days of said opinion.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106.

---

[1] Citations to "App." are to the appendix filed with this Petition for Writ of Certiorari pursuant to Supreme Court Rule 14(i).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Eleventh Amendment

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const., Fourteenth Amendment, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or caused to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable in equity, or other proper proceeding for redress.

Federal Rule of Civil Procedure 12(b)(6)

(b) **How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim,

counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(6) failure to state a claim upon which relief can be granted.

Federal Rule of Civil Procedure 12(c)

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Nevada Revised Statutes 41.031.3

The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States.

STATEMENT OF THE CASE

The underlying facts of this case arose in 1989 when the Nevada Gaming Control Board (NGCB) found an unauthorized computer chip being used by American Coin Companies (a slot machine route operator with approximately 1,100 slot machines operating in numerous businesses throughout Clark County, Nevada), a partnership of Rudolph LaVecchia Sr., Rudolph LaVecchia, Jr. and Petitioner, Frank

A. Romano, all of whom were duly licensed by the Nevada Gaming Commission (NGC).

Disciplinary proceedings were initiated by NGCB alleging numerous counts of criminal behavior on the part of the LaVecchias, but no such behavior attributed to Romano. The charge against Romano was essentially that "he should have known" what his partners were doing to cheat and thereby violate the gaming statutes of Nevada, grounds for both disciplinary and criminal punishment.

After it had been ordered by the NGC to give Romano the details of the information supporting certain counts in its disciplinary complaint since it refused to do so in the name of privilege, confidentiality of disclosure of informants, etc, the NGCB amended its complaint and excluded specific counts.

The NGCB was not ordered to provide any information to Romano relating to the remaining counts in the amended complaint, and, most importantly, did not do so. Thus, the allegations asserted against Romano were "shotgun" allegations, that is, simply barefaced allegations without any charging conduct alleged to have been committed or omitted by him.

Romano's attorney attempted to discover the nature and extent of evidence the NGCB possessed against his client but the Nevada Attorney General, acting as attorney for the NGCB and NGC continued its refusal, under claim of confidentiality by reason of criminal investigation and privilege, to divulge any information to Romano, including exculpatory evidence (which Romano found to exist some years later).

By reason of tremendous exposure in the press, including local newspapers and television, persistent questioning by the Las Vegas Metropolitan Police Department, the Federal Bureau of Investigation, the DEA and the IRS, and the resulting humiliation, embarrassment and anxiety thus created, and upon the advice of his counsel (later found to be impaired because of drug abuse) that he could not prevail and might be criminally charged, Romano agreed to enter into a stipulation with the NGCB under and pursuant to which he surrendered his gaming licenses, agreed to a fine and waived his constitutional rights. The LaVecchias, who had fled the State of Nevada, acting through counsel, agreed to revocation of their licenses and greater fines as well as waive all other rights. The stipulation is dated February 22, 1990 and approved by the NGC on that date.

In 1992, Romano, who lost almost all of his assets as a result of the closure of American Coin Companies (precipitated by the substantial diminishment in his personal financial statement and the loss of credit lines as a consequence thereof as well as a huge loss of income), Mr. and Mrs. Romano filed a joint Chapter 11 petition in the United States Bankruptcy Court for the District of Nevada. Having then located the LaVecchias, the Romanos filed suit against the LaVecchias in the Bankruptcy Court seeking redress for their conduct. In September, 1995, judgment was entered in favor of the Romanos against the LaVecchias for some $8,000,000.00, including punitive damages. The NGCB had been a party to a companion suit which was dismissed, but participated in an indirect manner in the Romano-LaVecchia suit. As a result of said suit, the Bankruptcy Court found, among other things, that Frank Romano had not committed any violation of Nevada Gaming Laws and had no knowledge of the criminal conduct of the LaVecchias. As a result of discovery in that case, over the

objection of the NGCB on the same grounds of confidentiality and privilege, evidence was uncovered which showed quite clearly that (1) the NGCB absolutely knew of Romano's lack of culpability in violating Nevada law, (2) failed to disclose the same to Romano or his attorney, in fact covered the evidence up so that it could not be discovered by Romano, (3) pursued its prosecution of Romano knowing full well he was not either civilly or criminally liable, (4) drafted and presented to Romano for execution the aforesaid stipulation in spite of its knowledge of his lack of culpability and (5) presented said stipulation to the NGC which approved the same.

After the LaVecchias' appeal to the Bankruptcy Appellate Panel of the Ninth Circuit resulted in affirmance of the judgment, Romano moved to invoke the equitable powers of the NGC to vacate the order approving said stipulation and reinstate his licenses and cited the Bankruptcy Court findings and conclusions which clearly absolved Romano from any culpable conduct as the basis for his motion. This motion was denied on the ground that the NGC did not have statutory authority to consider such a motion.

The Romano's then sought redress by the filing of their complaint under 42 U. S. C. §1983 in the U. S. District Court for the District of Nevada. The complaint alleged, among other things, that the Nevada gaming officials deprived Romano of a valuable vested property right, to wit, his gaming licenses, without due process of law and by selective enforcement of the gaming statutes, had denied him equal protection under the law. This conduct, the hiding and cover-up of material exculpatory evidence, clearing Romano of any civil or criminal liability, thus, violated the Romanos' civil rights.

The District Court (Judge Howard McKibben) dismissed the case under Fed. R. Civ. Pr. 12(b)(6) and an appeal was timely taken to the Ninth Circuit Court of Appeals. That court affirmed the District Court's dismissal on the sole ground of "absolute immunity" of the state officials notwithstanding the allegations in the complaint that said individuals acted *ultra vires* of their official functions.

ARGUMENT FOR GRANTING WRIT

The Writ of Certiorari should be granted because the Ninth Circuit Court of Appeals has taken a view distinctly different from that espoused by the Supreme Court as well as other Circuits. The Ninth Circuit would "protect the gaming industry" in spite of its violations of due process and equal protection of all individuals under the law on the basis that state law, regardless of its application and of the violation thereof in derogation of a person's civil constitutional rights, grants an exalted right of **absolute immunity** from the claims of those whose rights have been violated.

The Supreme Court should require the Ninth Circuit to adhere to the Supreme Court's decisions, to give effect to *stare decisis*, and to come into line with other circuits.

ARGUMENT 1

The district court and the Ninth Circuit ruled that respondents were immune from suit under 42 U.S.C. § 1983. Such rulings contradict this court's prior decision in that dismissal in the pleading stage without opportunity to establish proof deprives individuals of their constitutional rights.

In Scheuer v. Rhodes[2] this court held that dismissal of an action against state officials at the pleadings stage "is inappropriate." [3] The Romanos, like the plaintiffs in *Scheuer*, alleged facts in their complaint that demonstrated that they were seeking to impose individual and personal liability on the named respondents for their unlawful conduct. However, the district court did not afford them the opportunity to establish by proof how they were deprived of their federal rights by the respondents under color of state law.

The Ninth Circuit upheld the district court's decision[4] pursuant to N.R.S. § 41.031(3) and under the doctrine set forth in *Pennhurst v. Haldeman*,[5]. The Ninth Circuit's reliance on *Pennhurst* is misplaced in that there, this court considered the propriety of seeking injunctive relief in federal court against a state to enforce state law. The Romanos are seeking relief for violation of their civil rights in federal court against state officials under federal law.

The Ninth Circuit recognized that the Romano's had properly plead their case for establishing liability on the individual respondents in their non-official capacities by stating:

> [h]owever, the Romanos have brought suit against individual Board and Commission members in their personal capacities as well. They assert that, while acting under color of state law, the defendants deprived Mr. Romano of a protected property interest in violation of

---

[2] 416 U.S. 232 (1974)
[3] Id. at 235
[4] App A at 9a.
[5] 465 U.S. 89(1984)

> due process. They need to allege nothing more to avoid the Eleventh Amendment's shield. The Supreme Court has made it clear that a plaintiff can establish personal liability in a § 1983 action simply by showing that the official acted under color of state law in deprivation of a federal right. . . Consequently, the Eleventh Amendment imposes no bar to the Romanos' action against the individual defendants in their personal capacities. [6]

Notwithstanding that recognition of the law, the Ninth Circuit held totally contrary to the same by determining that the Romanos' claim that the officials acted outside the scope their duties was not true----no evidence was ever presented to determine this issue! The Ninth Circuit has engaged in "trial by guess." The Court went into great detail to describe the functions of the several gaming entities, however, it has totally failed to recognize that corruption resulting in the violation of basic constitutional rights does not cloak those entities with immunity from suit.

In this case, the Attorney General and the members of the NGCB acted in three capacities, investigator, prosecutor and judge. As prosecutors, they failed to perform their duties because they failed to disclose material exculpatory evidence. In so doing, they not only mislead the Romanos, but also mislead the NGC, thereby themselves violating the Nevada gaming statutes. In so doing, the individuals acted outside their authority. This intentional misconduct represents an egregious violation of Romano's constitutional rights, which rights they were charged to uphold, and for which they had

---

[6] App. A at 10a.

taken oaths to protect. **These actions vitiate any claim of absolute immunity**.

This issue was also addressed in the case of *Harlow v. Fitzgerald*[7] wherein this court determined that prosecutors do not enjoy absolute immunity for acts taken in those capacities.

The Ninth Circuit disagreed with the Romano's contentions that the individual respondents acted outside the scope of their duties [8] because Nevada law safeguards officials from acting outside of their authority. The Ninth Circuit relied on a number of Nevada statutes [9] without considering the facts of the case which clearly demonstrate that laws do not prevent individuals from acting outside of their authority. The principal issue here is that the Romano's were never afforded the opportunity to present evidence to support their claims that the respondents violated their constitutional rights.

Second, Frank Romano was unable to prove his non-culpability within the restricted time frame and within the context of the disciplinary action represented by the complaint. By virtue of the institution of proceedings by the Romanos before a federal court, with discovery processes unavailable under the regulatory and procedural rules of the Commission by reason of privilege and other legal barriers, and with an adversarial trial in which the previously-licensed parties were represented by counsel and presented both documentary and oral evidence within the strict rules of federal procedure, Frank Romano established without question

---

[7] 457 U.S. 800 (1982).

[8] App. A at 11a.

[9] N.R.S. §463.140, App. E at 77a; N.R.S. § 463.1405(1,(2), App. E at 76a; N.R.S. § 463.1405(3), App. E at 69a; N.R.S. § 463.140(5), App. E at 79a and; N.R.S. § 463.310, App. E at 73a.

his innocence of those facts relied upon by the NGCB in bringing on the disciplinary action.

The NGCB had a duty to provide to Romano or his counsel any evidence, which tended to negate or did negate the charges alleged by the NGCB and the NGCB failed and refused to provide the same when requested. Moreover, the members of the NGCB and the Attorney General knew that Romano was not in violation of any of the statutes or regulations, nevertheless, persisted in prosecuting him up to and including February 22, 1990 in order to achieve their goal, to wit, disenfranchising him and causing him to pay a fine for alleged conduct which he did not perform. By reason of the foregoing misconduct by the individuals comprising the NGCB and the Attorney General, Romano's right to constitutional due process has been denied.

Constitutional due process requires that the administrative agency pursuing disciplinary charges provide the party to be charged with all evidence which negates or tends to negate the charges. The law is clear that a party to be charged in an administrative disciplinary matter is entitled to due process. Moreover, Nevada statutes dictate that each person appearing before the Nevada Gaming Commission is entitled to due process.

"Due process" has been characterized as meaning a full and fair hearing. It is rudimentary law that the suppression by the prosecution of evidence favorable to an accused, upon request, violates due process whether the evidence is materially related to guilt or to punishment irrespective of good faith or bad faith of the prosecution.

Brady v. Maryland.[10] This case was cited as a foundation case by the Nevada Supreme Court in the case of *Baccari v. State of Nevada*[11] in which the court states that the language in *Brady,* Rule 16 in the Jencks Act includes no reference to the timing of possession and suppression. It goes on to say:

> it is most consistent with the purposes of those safeguards to hold that the duty of disclosure attaches in some form once the Government has first gathered and takes possession of the evidence in question. Otherwise, disclosure might be avoided by destroying vital evidence before prosecution begins or before the defense knows of its existence. Hence we hold that before request for discovery has been made, the duty of disclosure is operative as duty of preservation. Only if evidence is carefully preserved during the early stages of investigation will disclosure be possible later.

The court further went on to state that when evidence known to the prosecution is not divulged, such is a material fact only if there is either bad faith or connivance on the part of the Government or that the defendant was prejudiced by the loss of the evidence.[12]

The duty of the State in charging a violation of law is constitutionally mandated. *United States v. Agurs* [13] and

---

[10] 373 U.S. 83 at 87 (1963).

[11] 624 P.2d 1008 (1981)

[12] *Howard v. State*, 95 Nev. 580, 582, 600 P.2d 214 (1979).

[13] 427 U.S. 97, 110 - 112 (1975).

United States v. Bagley[14]. Both of the cited cases were premised upon the holding in *Brady* wherein the prosecution in the criminal case suppressed evidence after specific requests for such evidence. In *Agurs*[15], the court envisioned three possibilities under *Brady*[16] namely, each involving the discovery at the trial of information known to the prosecution but unknown to the defense.

The first situation involves undisclosed evidence by which the prosecution's case includes perjured testimony which the prosecution knew or should have known was perjured. The second is characterized by a pretrial request for a specific evidence which, if suppressed, might have an effect of the outcome of the trial and the third involving evidence where there was no request or general request was made and the omitted evidence creates a reasonable doubt which did not otherwise exist, in which case constitutional error has been committed.

In *People v. Vilardi*[17] the New York Court of Appeals held that suppression or even negligent failure to disclose material evidence, while more serious in the face of a specific request in its potential to undermine the fairness of a trial, are to be given more weight and simply one of the number of discretionary factors to be reviewed, however, that court had

> long emphasized our concept of due process in this area is, in large measure, predicated both upon "elemental fairness" to the defendant and

---

[14] 473 U.S. 667, 674 (1984).
[15] Id.
[16] Supra
[17] 556 N.Y. S.2d 518, 523 (1990).

> upon concern that the prosecutor's office discharges its ethical and professional obligations.

The New York court adopted a rule that non-disclosed evidence is material if there exists a "reasonable possibility that failure to disclose the material contributed to the defendant's conviction." Nevada has adopted *Vilardi* and found that the due process clause in the Nevada Constitution[18] applies if suppressed evidence might have affected the trial, in which case due process has been denied. *Roberts v. State of Nevada*.[19]

This principle is amplified by Nevada Supreme Court Rule 179: Responsibilities of a Prosecutor. (Particular note should be made of the fact that while it is applicable to a criminal case, it certainly applies to a quasi-criminal such as the disciplinary complaint in this matter.) The rule requires that the prosecutor, among other things, shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause and to make timely disclosure to the defense of all evidence and information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense. In the instant case, Attorney Lisa Miller, Deputy Attorney General, was well aware of the facts relating the non-liability of Romano. Notwithstanding her knowledge, also chargeable to her client, the NGCB she failed to dismiss the disciplinary complaint and failed to disclose all of the evidence and information known to her that tended to negate the guilt of Romano.

---

[18] Nevada Constitution Article I Section 8

[19] 23217 Nev. Sup. Ct. September 28, 1994.

In the instant case, evidence appeared following February 22, 1990 which strongly infers that the NGCB and its counsel were aware of the non-culpability of Romano. The evidence later obtained by Romano indicates that the NGCB was fully aware of evidence which negated Romano's liability. Nevertheless, the NGCB persisted in prosecuting its disciplinary complaint and allowed Romano to enter into a Stipulation which effectively deprived him of his constitutionally protected property rights. Had Romano known of this evidence, he would never have entered into the stipulation on that date. This represents a clear-cut case of governmental malfeasance. Failure to divulge the information amounts to a "cover-up" which ought not to be tolerated in our free society and should not be countenanced by any court.

ARGUMENT 2

The Ninth Circuit affirmed the district court's opinion by holding that the conduct of the members of the NCG, NGCB and the Attorney General was a state action and the individuals could not be held liable for a state action because that is barred by the Eleventh Amendment.[20]

Justice White, writing the opinion for the Court in *Home Telephone and Telegraph Company*[21], opined that:

> An **unauthorized** (emphasis ours) act of a state agent is not, under the authorities, state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.

---

[20] App. A at 9a.

[21] *Home Telephone and Telegraph Company v. City of Los Angles*, 227 U.S. 278.

The Ninth Circuit also relied on *Butz v. Economou*[22] . In considering absolute immunity, this court reasoned that damages actions against high officials are "an important means of vindicating constitutional guarantees." Most importantly, *Butz* also identifies with whom the allocation of the burden of proof rests. "The burden of justifying absolute immunity rests on the official asserting the claim."[23] The *Butz* court relied on *Harlow v. Fitzgerald*[24] The *Harlow* court reasoned that:

> [t]he resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees. (Citing *Butz*, and *Bivins v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 410 (1971) ("for people in Bivens' shoes, it is damages or nothing"). It is this recognition that has required the denial of absolute immunity to most public officers.[25]

While this court has acknowledged that the special functions of some officials might require absolute immunity, this court has held that governmental officials claiming absolute immunity from personal liability for unconstitutional conduct "must bear the burden of showing that public policy

---

[22] 438 U.S. 478, 514-15 (1978).

[23] *Butz* at 506 514-15 (1978); *Harlow v. Fitzgerald*, 457 U.S.800, at 812 (1982).

[24] *Harlow, id.*

[25] *Id*, at 813-814.

requires an exemption of that scope."[26]

Respondents are not entitled to absolute immunity based solely upon their functions under the facts of this case. The Ninth Circuit's reliance on *Butz* is misplaced since this Court held in *Harlow*

> an executive official's claim to absolute immunity must be justified by reference to the public interest in the special functions of his office, not the mere fact of high stations.

There is no public interest in prosecuting those who do not break the law based on personal dislike or out of retaliation, as in this case. The motivations behind the actions of the respondents need further exploration to determine this issue, and a finding of immunity here by the district court without gathering and presentation of additional evidence, can only be presumed to have been based on the mere fact of high station of the respondents.[27]

The Ninth Circuit rationalized the premise set forth in the decision in *Buckley v. Fitzsimmons*[28] wherein this court adopted a "functional approach" to

> [d]etermining whether an official is entitled to absolute immunity. This approach looks to the nature of the function performed, not the identity of the actor who performed it.

---

[26] *Harlow* at 808 (quoting *Butz* at 506).

[27] *See also Mitchell v. Forsyth*, 472 U.S. 511 (1985).

[28] 509 U.S. 259, 269 (1993).

However, the Ninth Circuit failed to recognize the distinction in the case at bar and the facts in *Buckley*. This court has long recognized that when prosecutors are not acting as advocates of the state they are not entitled to absolute immunity. As this court stated,

> [t]he principles applied to determine the scope of immunity for state officials are by now familiar. Section 1983 on its face admits of no defense of official immunity. It subjects to liability 'every person' who, acting under color of law, commits the prohibited acts.

In this matter, applying a functional approach to determining the nature of functions performed by the respondents is most difficult, in that the Attorney General, the NGC and the NGCB act and perform their duties under the guise of investigators, prosecutors and quasi-judges. The nature and extent to which each entity (and its members) carry out specific functions was neither addressed nor was evidence presented concerning same. Notwithstanding the Ninth Circuit presumed which functions were performed by whom.

Applying the functional approach, the NCB, NGCB and the Attorney General are not clothed with absolute immunity in this case. Their functions are so intertwined and convoluted that a careful analysis of what took place, when, where, why and in what function each individual was performing require an evidentiary hearing. The district court failed to recognize this.

This issue was presented to the Ninth Circuit, which it side-stepped. The Ninth Circuit determined that those who perform quasi-judicial functions are absolutely immune from damages for acts performed within their judicial capacities

based upon *Strump v. Sparkman.*[29] The *Strump* case was not premised on immunity of quasi-judicial officials acting in their judicial capacities, but on absolute immunity for judges in their judicial capacity. The *Strump* case is devoid of any controlling authority concerning quasi-judicial officials. The argument has been made that the members of the NGC and NGCB take oaths to uphold the laws and act in quasi-judicial functions; however, they are not clothed with absolute immunity such as judges. In their capacities, they must refer a case for prosecution to the Attorney General. They have no authority to prosecute a case within the judiciary.

Should this court determine that quasi-judicial officials hold absolute immunity, the question of whether or not the officials were acting in their official capacities must be determined before absolute immunity attaches by presentation of evidence showing the official was acting within his capacity.[30]

The Ninth Circuit upheld the district court's decision also under the theory set forth in *Imbler v. Pachtman* [31] stating that:

> prosecutors are extended absolute immunity from damages when performing activities closely associated with the judicial process.

In *Imbler* this court held that a state prosecuting attorney who acts within the scope of his duties in initiating and pursuing a criminal prosecution is absolutely immune

---

[29] 435 U.S. 349, 360 (1978); App. A at 10a.

[30] *Buckley v. Fitzsimmons*, 509 U.S. 259

[31] 424 U.S. 409, 430-31 (1976); App. A at 10a.

from suit under 42 U.S.C. §1983;[32] however, this court specifically declined to decide whether a prosecutor in an investigatory or administrative capacity is absolutely immune from suit.[33]

ARGUMENT 3

Most importantly, the Ninth Circuit, without regard for the Romanos' constitutional rights, determined that the individual respondents did not act outside the scope of their duties and placed these agency officials in a high station based upon the premise that the economics attached to the gaming industry out-weigh an individual's constitutional rights when it stated:

> [t]he case at bar underscores the importance of extending absolute immunity to gaming officials involved in disciplinary proceedings. The highly regulated gaming industry in Nevada generates millions of dollars. Where these dollars go turn on decisions made by Board and Commission members, who determine which people will or will not be 'players' in the industry. With so much at stake in their decisions, these officials must be able to pursue disciplinary proceedings 'free from intimidation and harassment.' *Butz*, 438 U.S. at 516. To deny them immunity would be to disservice the broader public interest in

---

[32] *But see* concurring opinion of Justice White, *id.* at 430 ("I disagree with any implication that absolute immunity extends to suits charging unconstitutional suppression of evidence.")

[33] *Id* at 430.

> having people perform these functions without fear of having to personally defend their actions in civil lawsuits like the Romanos'.[34]

The Ninth Circuit clothed the respondents with absolute immunity because the gaming industry generates millions of dollars. The amount of money generated by an industry has no correlation with what makes good public policy. Public policy and the Constitution dictate that all individuals should be "free from intimidation and harassment", just as the Romanos should be free from intimidation, harassment, oppression, malfeasance by governmental officials who act under color of law.

CONCLUSION

The Petition for Writ a Writ of Certiorari should be granted based upon the foregoing.

Respectfully submitted

/s/_____
FRANK A. ROMANO

/s/_____
MARIA A. ROMANO
Pro Per
1900 E. Flamingo Road
Suite 296
Las Vegas, NV 89119-5116
(702) 699-9000

---

[34] App. A at 14a

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[Filed February 26, 1999]

No. 97-17019

FRANK A. ROMANO;
MARIA ROMANO,
Plaintiffs-Appellants,

v.

WILLIAM BIBLE; STEVE DUCHARME; C. BRIAN HARRIS; DEBORAH P. GRIFFIN; AUGIE GURROLA; WILLIAM CURRAN; BOB J. LEWIS; GERALD CUNNINGHAM; THOMAS ROACH; DENNIS AMERINE; JOHN O'REILLY; KENNETH R. GRAGSON; BETTY B. VOGLER; NEVADA GAMING CONTROL BOARD; NEVADA GAMING COMMISSION; FRANKIE SUE DEL PAPA, Attorney General of the State of Nevada,
Defendants-Appellees.

OPINION

December 11, 1998, Argued and Submitted
San Francisco, California

SUMMARY

Government Law/Licenses

The court of appeals affirmed a judgment of the district court. The court held that absolute and sovereign immunity shield state officials from liability for disciplinary revocation of a gaming license.

In 1989, appellee Nevada Gaming Control Board instituted disciplinary proceedings against appellant Frank Romano and his business partners. Following settlement negotiations, Romano entered into a stipulation with the Board agreeing to relinquish his gaming license.

In bankruptcy proceedings, Romano filed an adversary action in which the bankruptcy court found that he was not culpable for the misconduct of his partners that underlay the Board's disciplinary proceedings.

Romano petitioned appellee Nevada Gaming Commission to vacate its order approving the stipulation that led to the revocation of his gaming license. Because seven years had elapsed since the date of the stipulation, the Commission concluded that it lacked jurisdiction to consider the petition.

Romano and his wife filed a damages action under 42 U.S.C. § 1983 against the Board, the Commission, and various gaming officials in their personal and official capacities. One of the complaint's allegations was that the defendants wrongfully withheld evidence that was exculpatory

of Mr. Romano.

The district court ruled that the Eleventh Amendment barred the action against all the defendants, and that both absolute and qualified immunity shielded them from liability. The Romanos appealed.

[1] The Board and the Commission as agency defendants were immune from suit. The Eleventh Amendment bars suits against a state or its agencies for all types of relief, absent unequivocal consent by the state. Nevada did not consent to suit by expressly waiving its Eleventh Amendment immunity. [2] The Eleventh Amendment also barred the Romanos' claims against the remaining defendants in their official capacities.

[3] However, a plaintiff can establish personal liability in a § 1983 action by showing that the official acted under color of law in deprivation of a federal right. The Eleventh Amendment imposed no bar to the Romanos' action against the individual defendants in their personal capacities.

[4] Absolute immunity extends to agency officials when they preside over hearings, initiate agency adjudication, or otherwise perform functions analogous to judges and prosecutors. Judges and those performing quasi-judicial functions are absolutely immune from damages for acts performed within their judicial capacities. Prosecutors are extended absolute immunity from damages when performing activities closely associated with the judicial process. However, quasi-prosecutorial immunity does not attach to administrative or investigatory acts by prosecutors unrelated to their preparation for and initiation of prosecution.

[5] Under Nevada law, the Board must investigate the qualifications of each applicant for a gaming license, and has discretion to recommend denial or revocation of a license. The Commission may then deny or revoke a license for any cause deemed reasonable. Both Board and Commission members can issue subpoenas, compel the attendance of witnesses, administer oaths, and require testimony under oath.

[6] Either the Board or Commission may recommend that the attorney general prosecute any public offense committed in violation of gaming laws. The Romanos sued appellee Attorney General Frankie Sue Del Papa as the party responsible for the supervision and prosecution of Mr. Romano's case. She was entitled to absolute immunity because the activity of representing the Board and the Commission in the disciplinary action was within the scope of her duties in pursuing quasi-judicial proceedings.

[7] The Board conducts investigations and decides whether to file complaints with the Commission disciplining a licensee. In so doing, it acts much like a prosecutor. The Board initiated disciplinary proceedings against Mr. Romano, and entered into settlement negotiations with him, actions that were prosecutorial in nature. Moreover, prosecutorial functions that require the exercise of discretion are absolutely immune, and the decision whether to disclose exculpatory evidence that has nor been requested is such a function. The Board was thus entitled to absolute immunity.

[8] Commission members adjudicate disciplinary proceedings against licensees. They conduct hearings with many of the traditional safeguards of courts, and issue orders. As with any judicial plea bargain, the Commission approved

the stipulation entered into between Mr. Romano and the Board. Like the other defendants, Commission members carried out acts of independent decision-making integral to the functioning of a quasi-judicial process.

[9] Factors that are characteristic of the judicial process, and thus relevant to the absolute immunity inquiry, include the adversarial nature of the process, the correctability of errors on appeal, and the presence of safeguards in the regulatory framework to control unconstitutional conduct and insulate adjudicators from political influence. Statutory procedural safeguards in the gaming disciplinary process satisfy these factors.

[10] To deny the gaming officials immunity would have been to disservice the public interest in having people perform disciplinary functions without fear of having to personally defend their actions in lawsuits. Absolute immunity protected their gaming decisions.

COUNSEL

Edward S. Coleman, Las Vegas, Nevada, for the plaintiffs-appellants.

P. Mark Ghan, Solicitor General, Office of the Attorney General, Carson City, Nevada, for the defendants-appellees.

OPINION

FERGUSON, Circuit Judge:

Frank Romano voluntarily relinquished his gaming license and later wanted it back, claiming that the defendants violated his due process and equal protection rights. When the Nevada Gaming Commission refused to revisit the issue, Frank and Maria Romano brought this action for civil damages pursuant to 42 U.S.C. § 1983 against the Nevada Attorney General and currant and former members of the Nevada Gaming Commission and the Nevada Gaming Control Board. The Romanos contend that the defendants violated their constitutional rights by depriving Mr. Romano of his gaming license. The district court granted the state defendants' motion to dismiss on seven alternate grounds. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm on the grounds that absolute immunity and the Eleventh Amendment shield the defendants from liability.

I. BACKGROUND

We state the facts, as we must in this appeal, as they are set forth in the Romanos' complaint. Since 1981, the Nevada Gaming Commission ("Commission") licensed Mr. Romano to own, manufacture, and distribute gaming devices as a partner in American Coin Companies. In 1989, the Nevada Gaming Control Board ("Board"), which investigates and prosecutes violations of the gaming laws, filed a complaint with the Commission seeking disciplinary action against Mr. Romano and his partners, Rudolph and Rudolph M. LaVecchia. The Board alleged that the LaVecchias altered gaming devices to defraud players, a practice known as "gaffing," and that Mr. Romano was vicariously criminally liable for their conduct. The LaVecchias fled Nevada, leaving Mr. Romano to contend with the authorities.

For a number of reasons, including the government's failure to cooperate with discovery and ineffective assistance of counsel, Mr. Romano entered into a stipulation with the Board in 1990 agreeing to relinquish his gaming license and to pay a fine. As part of the stipulation, Mr. Romano waived his statutory right to a hearing and waived any legal rights that he might have against Board members. While acknowledging that the stipulation was voluntarily signed, Mr. Romano did not admit liability.

As a result of the revocation of Mr. Romano's license and the closure of his businesses, the Romanos suffered financial losses and filed for bankruptcy in 1992. The Romanos also filed an adverse complaint in the bankruptcy proceeding against the LaVecchias. During that proceeding, an investigator employed by the Board testified to Mr. Romano's lack of knowledge concerning the fraud. One of the bankruptcy court's factual findings was that Mr. Romano was not culpable for his partners' conduct.

Consequently, Mr. Romano petitioned the Commission to vacate its order approving the stipulation which had resulted in the voluntary relinquishment of his gaming license. The Commission concluded that it lacked jurisdiction to hear the petition. Nevada law provides that, if no petition for judicial review has been filed, a motion for rehearing must be brought within 10 days of the Commission's order. Seven years had elapsed since Mr. Romano entered into the stipulation. The Commission also declined to consider Mr. Romano's petition under a regulation permitting it to issue discretionary rulings. The result was that Mr. Romano could not obtain discovery.

The Romanos then filed this action, contending that the failure of the Board to provide them with evidence in its possession tending to exculpate Mr. Romano violated their due process rights. In addition, the plaintiffs alleged that by instituting disciplinary action against Mr. Romano, the Board selectively enforced the Nevada Gaming Act in violation of the plaintiffs' equal protection rights. The complaint sought compensatory and punitive damages. After a hearing, the district court granted the state's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). The court concluded that: (1) the Romanos did not have a property right in the gaming license; (2) the Romanos failed to allege an equal protection violation in the pleadings; (3) Mr. Romano waived his right to file a § 1983 action against state officials by signing the stipulation; (4) the statute of limitations prohibits the action; (5) the Eleventh Amendment bars the action against all defendants; and (6) both absolute and qualified immunity shield the defendants from liability.

II. DISCUSSION

We review *de novo* a district court's dismissal for failure to state a claim under Rule 12(b)(6). *Steckman v. Hart Brewing Inc.*, 143 F.3d 1293, 1295 (9th Cir. 1998). We can affirm the district court's dismissal for failure to state a claim on any basis fairly supported by the record. *Janicki Logging Co. v. Mateer*, 42 F.3d 561,564 (9th Cir, 1994).

A. Eleventh Amendment

[1] Whether a state is immune from suit under the Eleventh Amendment is a question of law which we review de novo, *Micomonaco v. Washington,* 45 F.3d 316, 319 (9th Cir. 1995). The Nevada Gaming Control Board and the Nevada Gaming Commission as agency defendants in this action are immune from suit. The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state. *Pennhurst v. Halderman,* 465 U.S. 89, 100 (1984). Nevada has not consented to suit by expressly waiving its Eleventh Amendment immunity. N.R.S. § 41.031(3). Accordingly, we affirm the district court's dismissal as to the state agency defendants.

[2] The Eleventh Amendment also bars the Romanos' claims against the remaining defendants in their *official* capacities. The amendment prohibits actions for damages against an "official's office," that is, actions that are in reality suits against the state itself. *Stivers v. Pierce,* 71 F.3d 732, 749 (9th Cir. 1995).

[3] However, the Romanos have brought suit against individual Board and Commission members in their *personal* capacities as well. They assert that, while acting under color of state law, the defendants deprived Mr. Romano of a protected property interest in violation of due process. They need to allege nothing more to avoid the Eleventh Amendment's shield. The Supreme Court has made it clear that a plaintiff can establish *personal* liability in a § 1983 action simply by showing that the official acted under color of state law in deprivation of a federal right. *Hafer v. Melo,* 502 U.S. 21, 25 (1991). We also have presumed that officials

necessarily are sued in their personal capacities where those officials are named in a complaint, even if the complaint does not explicitly mention the capacity in which they are sued. *See Shoshone-Bannock Tribes v. Fish & Game Comm'n,* 42 F.3d 1278, 1284 (9th Cir. 1994); *Cerrato v. San Francisco Community College Dist.,* 26 F. 3d 968, 973 n. 16 (9th Cir. 1994). Consequently, the Eleventh Amendment imposes no bar to the Romanos' action against the individual defendants in their personal capacities.

B. Absolute Immunity

The district court concluded that absolute immunity protected the individual defendants named by the Romanos. We review *de novo* the district court's determination regarding immunity. *Trevino v. Gates,* 23 F.3d 1480, 1482 (9th Cir. 1994).

[4] Absolute immunity extends to agency officials when they preside over hearings, initiate agency adjudication, or otherwise perform functions analogous to judges and prosecutors. *Butz v. Economou,* 438 U.S. 478, 514-15 (1978). The Supreme Court has adopted a "functional approach" to determine whether an official is entitled to absolute immunity. This approach looks to the nature of the function performed, not the identity of the actor who performed it. *Buckley v. Fitzsimmons,* 509 U.S. 259, 269 (1993). Judges and those performing quasi-judicial functions are absolutely immune from damages for acts performed *within their judicial capacities. Stump v. Sparkman,* 435 U.S. 349, 360 (1978). Prosecutors are extended absolute immunity from damages when performing activities closely associated with the judicial process. *Imbler v. Pachrman,* 424 U.S. 409,

430-31 (1976). Quasi-prosecutorial immunity, however, does not attach to administrative or investigatory acts by prosecutors unrelated to their preparation for and initiation of prosecution. *Buckley,* 509 U.S. at 273. In extending absolute immunity to those within administrative agencies who perform prosecutorial and judicial functions, the Court recognized that administrative proceedings are usually adversarial in nature and provide many of the same features and safeguards that are provided in court. *Butz,* 438 U.S. at 513, Thus, we must assess the function that Nevada gaming officials performed when they engaged in the alleged unconstitutional conduct to determine if they are entitled to absolute immunity from damages.

[5] The Romanos contend that the individual defendants acted outside the scope of their duties. We disagree. Under Nevada law, Board and Commission members have access to all gaming premises to inspect or seize any gaming devices or documents relevant to suspected violations of the gaming laws. N.R.S. § 463.140. The Board must investigate the qualifications of each applicant for a gaming license and has discretion to recommend denial or revocation of a license. N.R.S. § 463.1405(1), (2). The Commission then may deny or revoke a license for "any cause deemed reasonable." N.R.S. § 463,1405(3). Both Board and Commission members can issue subpoenas, compel the attendance of witnesses, administer oaths, and require testimony under oath. N.R.S. § 463.140(5).

[6] Within the gaming regulatory scheme, the attorney general provides legal advice to the Board and Commission and represents them in proceedings initiated against them. N.R.S. § 463.0199. Either agency may recommend that the

attorney general prosecute any public offense committed in violation of the gaming laws. N.R.S. § 463.141. In Mr. Romano's case, Attorney General Frankie Sue Del Papa is the predecessor of the attorney general who prepared the stipulation on behalf of the Board. The Romanos sued her as the party "responsible for the . . . supervision and prosecution" of Mr. Romano's case. She is entitled to absolute immunity because the activity of representing the Board and Commission in the disciplinary action against Mr. Romano is within the scope of her duties in pursuing quasi-judicial proceedings. *See Hirsh v. Justices of Supreme Court of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995) (concluding that the California Attorney General was entitled to absolute immunity for his limited role in the Bar disciplinary system).

[7] The Gaming Control Board conducts investigations and decides whether to file complaints with the Commission disciplining a licensee. N.R.S. § 463.310. In so doing, it acts much like a prosecutor. The Board initiated disciplinary proceedings against Mr. Romano and entered into settlement negotiations with him, actions that are prosecutorial in nature. Moreover, prosecutorial functions that require the exercise of discretion are absolutely immune, and the decision whether to disclose exculpatory evidence which has not been requested is such a function. *See Imbler*, 424 U.S. at 431-32 n.34. Thus, the Board is entitled to absolute immunity as well.

[8] Commission members adjudicate disciplinary proceedings against licensees. They conduct hearings with many of the traditional safeguards of courts, and they issue orders. Every party to a hearing before the Commission can call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses, and offer rebuttal

evidence. N.R.S. §463.313. The Commission may take "judicial notice" of facts and may cite parties for contempt like any Article III court. *Id.;* N.R.S. § 463.314. Members who hear the evidence against a licensee must render a written decision on the merits which includes findings of fact. N.R.S. § 463.3145. Here, as with any judicial plea bargain, the Commission approved the stipulation entered into by Mr. Romano and the Board to resolve his disciplinary proceeding. Like the other defendants, Commission members carried out acts of independent decision-making integral to the functioning of a quasi-judicial process.

[9] In *Butz*, file Court considered several other factors to be characteristic of file judicial process and, thus, relevant to the absolute immunity inquiry. These factors include the adversarial nature of file process, the correctability of errors on appeal, and the presence of safeguards in the regulatory framework to control unconstitutional conduct and to insulate the adjudicators from political influence. 438 U.S. at 512-13. Statutory procedural safeguards in the gaming disciplinary process satisfy these factors. In addition to the safeguards noted above, licensees are entitled to judicial review of the Commission's decision. N.R.S. §§463.315, 463.318. The Commission may grant a rehearing upon petition if additional material evidence exists, N.R.S. § 463,3145. Parties may have counsel. Besides the opportunity to present and cross-examine [1626] witnesses, parties are provided with adequate notice of the hearing and a copy of the charges against them. N.R.S. § 463.312. Nevada also attempts to shield Commission members from political influence. The governor appoints members of the Commission for staggered terms of four years, and each member can be removed by the governor. N.R.S. § 463.024;1985 Nev. Stat., ch. 266, § 2 at

804. No elected official or officer of any political party can serve as Commissioner, or any person with a pecuniary interest in the gaming industry. N.R.S. §§ 463.023, 463.025. Not more than three members can be of the same major political party. *Id.*

In addition, other courts have extended *Butz* to state agency officials involved in the adjudication of state regulatory matters, at least where the regulatory scheme provided safeguards against arbitrary and biased decision-making. *See, e.g., Hirsh,* 67 F.3d at 715 (Bar Court judges and prosecutors in attorney disciplinary actions have quasi-judicial or quasi-prosecutorial immunity); *Bermudez v. Duenas,* 936 F.2d 1064, 1066 (9th Cir. 1991) (parole board officials entitled to absolute immunity for activities which are part of the decision to grant, deny or revoke parole).

III. CONCLUSION

[10] The case at the bar underscores the importance of extending absolute immunity to gaming officials involved in disciplinary proceedings. The highly regulated gaming industry in Nevada generates millions of dollars. Where these dollars go turn on decisions made by Board and Commission members, who determine which people will or will not be "players" in the industry. With so much at stake in their decisions, these officials must be able to pursue disciplinary proceedings "free from intimidation and harassment." *Butz,* 438 U.S. at 516. To deny them immunity would be to disservice the broader public interest in having people perform these functions without fear of having to personally defend their actions in civil damages lawsuits like the Romanos'. *See Babcock v. Tyler,* 884 F.2d 497, 502 (9th

Cir. 1989). We conclude that absolute immunity should protect these gaming decisions.[1]

AFFIRMED.

---

[1] Because this case can be resolved on Eleventh Amendment and immunity grounds, we do not reach the other issues raised in this appeal. Nor do we express any view on the merits of the complaint.

APPENDIX B

UNITED STATES DISTRICT COURT

[Filed August 6, 1997]

CASE NUMBER: CV-S-97-436-HDM(LRL)

FRANK A. ROMANO and)
MARIA ROMANO)
)
v.)
)
WILLIAM BIBLE, et al.)
)

JUDGMENT IN A CIVIL CASE

____ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered it's verdict.

__X__ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

____ **Decision by Court**. This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Defendants' Motion to Dismiss is granted. The above-captioned action is dismissed.

Date: August 4, 1997

LANCE S. WILSON
Clerk

/s/_____
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

[Filed August 6, 1997]

CV-S-97-0436-HDM(LRL)

FRANK A. ROMANO and	)
MARIA ROMANO,	)
Plaintiff(s),	)
	)
v.	)
	)
WILLIAM BIBLE, *et al.*,	)
Defendant(s).	)
	)

MINUTES OF THE COURT
August 4, 1997

PRESENT: HONORABLE HOWARD D. McKIBBEN,
U.S. DISTRICT JUDGE

Deputy Clerk: Bette Stewart

Reporter/Recorder: Margaret Griener

Counsel for Plaintiff(s): Edward S. Coleman

Counsel for Defendant(s): Thomas J. Ray

PROCEEDINGS: Telephonic Hearing on Defendants' Motion to Dismiss (#6)

8:00 a.m. Court convenes.

Arguments are presented. The court sets forth the findings and conclusions on the record.

IT IS ORDERED that Defendants' Motion to Dismiss (#6) is granted.

8:32 a.m. Court adjourns.

LANCE S. WILSON, CLERK

By: /s/_____
Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

[Filed April 16, 1997]

No. CV-S-97-00436-HDM (LRL)

FRANK A. ROMANO;
MARIA ROMANO,
Plaintiffs-Appellants,

v.

WILLIAM BIBLE; STEVE DUCHARME; C. BRIAN HARRIS; DEBORAH P. GRIFFIN; AUGIE GURROLA; WILLIAM CURRAN; BOB J. LEWIS; GERALD CUNNINGHAM; THOMAS ROACH; DENNIS AMERINE; JOHN O'REILLY; KENNETH R. GRAGSON; BETTY B. VOGLER; NEVADA GAMING CONTROL BOARD; NEVADA GAMING COMMISSION; FRANKIE SUE DEL PAPA, Attorney General of the State of Nevada,
Defendants-Appellees.

COMPLAINT FOR DAMAGES FOR VIOLATION OF CIVIL RIGHTS (42 U.S.C. § 1983)

[JURY TRIAL DEMANDED]

Plaintiffs, Frank A. Romano and Maria Romano, complain of Defendants and allege:

I. PARTIES

1. Plaintiffs are husband and wife and are domiciliaries of Clark County Nevada. The interest of Plaintiff Maria Romano is that of the owner of a community property interest in and to the claims for relief herein alleged by her husband, Plaintiff Frank A. Romano. The Plaintiffs are herein individually and collectively referred to in the singular as "Plaintiff."

2. Defendants William Bible, Steve Ducharme, and C. Brian Harris each and all are members of the Nevada Gaming Control Board as of the date of filing this complaint, and Defendants William Bible, Gerald Cunningham, Dennis Amerine and Thomas Roach were members of the Nevada Gaming Control Board (herein "NGCB") during the years 1989 and 1990, who, each and all purported to act within the scope of their official duties concerning the conduct hereafter alleged, but who acted ultra vires of their delegated official duties, under the color of law, and, are, accordingly, personally liable for the damages to Plaintiff as herein alleged. Each member of the Nevada Gaming Control Board (NGCB) is required, before entering upon the duties of his office, to subscribe to the constitutional oath by office. ***NRS 463.060.*** Such oath is an attestation that each member will support and abide by the United States Constitution and the Nevada Constitution.

3. Defendants William Curran, Bob J. Lewis, Deborah P. Griffin and Augie Gurrola each and all are members of the Nevada Gaming Commission as of the date of filing this complaint, and Defendants William Curran, Bob J. Lewis, John O'Reilly, Kenneth R. Gragson and Betty B. Vogler were members of the Nevada Gaming Commission (herein "NGC") during the years 1989 and 1990, who purported to act within the scope of their official duties concerning the conduct hereafter alleged, but who acted ultra vires of their delegated official duties, under the color of law, and, are, accordingly, personally liable for the damages to Plaintiff as herein alleged. Each member of the Nevada Gaming Commission is required, before entering upon the duties of his office, to subscribe to the constitutional oath of office. ***NRS 463.025 § 3.*** Such oath is an attestation that each member will support and abide by the United States Constitution and the Nevada Constitution.

4. Defendant Nevada Gaming Control Board is a duly constituted legal authority created under and pursuant to Nevada Revised Statutes 463.030, which at relevant times was controlled and managed by Defendants, Bible, Ducharme and C. Brian Harris, under whose authority the conduct hereinafter alleged was accomplished. Defendant NGCB has the duty of investigating, passing upon and recommending approval or rejection of applications for gaming licenses and allied matters to the NGC and of enforcing the gaming laws of the State of Nevada.

5. Defendant Nevada Gaming Commission is a duly constituted legal authority created under and pursuant to Nevada Revised Statutes 463.023, which at relevant times was controlled and managed by Defendants Curran, Lewis, Griffin

and Gurrola (along with William Urga who recused himself from acting in connection with the conduct hereinafter alleged and is therefore not liable to Plaintiffs), under whose authority the conduct hereinafter alleged was accomplished. Defendant NGC has the duty of determining whether or not applicants for gaming licenses should be granted licenses, licensees would have their licenses terminated, restricted, conditioned or extended and otherwise acts in a quasi-judicial capacity in adjudging disciplinary proceedings instituted by the NGCB.

6. Frankie Sue Del Papa is sued herein in her official capacity as the Attorney General of the State of Nevada who is responsible for the legal advice, supervision and prosecution of the causes instructed by the NGCB and NGC. To the extent that this Defendant represents both the NGCB and the NGC, a conflict of interest exists, to wit, representation of both the recommending/enforcing agency and the quasi-judicial adjudicating agency which decided on whether to grant recommendation or to impose enforcement discipline.

II. JURISDICTION

7. Jurisdiction over this complaint exists in the above-captioned court in that this action is instituted to enforce and determine damages for the violation of Plaintiff's civil rights under and pursuant to 42 U.S.C.§1983.

III. GENERAL ALLEGATIONS

8. From and after 1981, Plaintiff was duly licensed by the NGC, pursuant to law, as a gaming device owner, manufacturer and distributor of gaming devices and to thereby

conduct gaming activities within the State of Nevada and continued to be so licenses until February 22, 1990 as hereinafter alleged.

9. On July 29, 1989, as a result of an investigation, sworn testimony of one Larry Volk, computer programmer for the American Coin Companies (while several companies existed under the American Coin names, they are individually and collectively herein referred to as "American Coin"), laboratory testing by the NGCB and other data, NGCB's agents seized certain assets of American Coin and sealed various gaming devices, resulting in the closure of the business operations (herein referred to as "the Closure").

10. On August 1, 1989, Complainant filed a complaint before the NGC seeking disciplinary action against the partners of American Coin, namely Rudolph LaVecchia and Rudolph M. LaVecchia and Plaintiff Frank A. Romano. Reference is made to said complaint and the amended complaint filed on January 4, 1990, both of which are incorporated herein by reference.

11. The charging allegations of said complaint and amended complaint are primarily directed against Rudolph LaVecchia, and Rudolph M. LaVecchia (herein collectively referred to as "the LaVecchias") for their unlawful activities in "gaffing" gaming devices (altering the same so that they cheated the players thereof) owned and operated by American Coin. Plaintiff is not charged with having committed any unlawful conduct, but is essentially charged with "should have known" that his partners were engaged in unlawful conduct, to wit, violating the gaming laws of Nevada. The complaint alleges that the respondents, including Plaintiff

have committed criminal acts, thus subjecting themselves to both disciplinary and criminal prosecution. (Notwithstanding such allegations, Plaintiff's lack of knowledge of his partners' conduct has been irrefutably established as is hereafter shown). Accordingly, said complaint and amended complaint alleged that Plaintiff was criminally liable vicariously for the conduct of his partners in derogation of the purpose and intent of the applicable Nevada Gaming Act statutes and in derogation of the legal principle that while on partner may be held civilly liable to the third parties for the conduct of his partners, the same is not the case in criminal or tort law.

12. Within a few days of the filing of the original complaint, the LaVecchias fled from the State of Nevada to parts unknown at that time and from that point on were represented by counsel within the State of Nevada.

13. By reason of the misconduct of others, to wit, Plaintiff's partners, Plaintiff was tainted according to all Defendants and, essentially, the burden was cast upon him to prove himself innocent of the alleged misconduct. While alleged criminal conduct must be established beyond a reasonable doubt by the enforcing agency (in this case the NGCB), that standard does not, in real life, apply to gaming licensing, rather, the burden is shifted to the licensee, in this case, upon Plaintiff to prove non-culpability by at least clear and convincing evidence, and in practice, beyond a reasonable doubt.

14. While Plaintiff contended that he was in no manner and by no means knowledgeable about the "gaffing" of gaming devices by the LaVecchias and notwithstanding his protestations of innocence from wrongdoing, Plaintiff's then

attorney urged Plaintiff to enter into a Stipulation with the NGCB to relinquish his gaming licenses and accept a fine, based upon several premises, to wit, (1) Plaintiff's counsel was unable to obtain any evidence from the NGCB concerning its investigations, laboratory examinations and results, oral testimony of its agents or otherwise concerning the claims of liability asserted against Plaintiff, under color of privilege and confidentiality claimed by the NGCB, and therefore, believed that there was no credible evidence other that Plaintiff's own word and that of the computer programmer that he was not aware of the unlawful conduct of his partners, the LaVecchias, and, accordingly, Plaintiff could not prevail at hearing before the NGC, (2) Plaintiff's counsel estimated the cost of defense to be some $500,000 for attorneys' fees and costs, (3) there was a personal dislike of Plaintiff by members of the NGCB because he had launched an investigation of the conduct and activities of the then members of the NGCB in order to obtain discovery, (4) at that time, substantial adverse publicity in newspapers and on television had been given the closure of American Coin to the embarrassment and humiliation of Plaintiff, and (5) Plaintiff had been informally charged by members of the NGCB as being as participant in "organized crime," and (6) said publicity had ignited the calling of loans made to Plaintiff by financial institutions generating monumental financial pressures on Plaintiff.

15. In order to resolve the issues raised in the said complaints, Plaintiff did, upon the advice of said counsel, and with great reservations, consent to and signed a "Stipulation and Order" (herein referred to as "Stipulation") as of February 22, 1990, prepared by a Deputy Attorney general at the instructions of Defendant Bible, wherein and whereby, among other things, Plaintiff agreed to voluntarily relinquish

his gaming license, which was approved by the Nevada Gaming Commission, received/filed in the above captioned proceeding. A copy of said document is marked "Plaintiff's Exhibit "1", attached hereto and incorporated herein by reference.

16. A Stipulation and Order was consented to and signed by the LaVecchias on the same date wherein and whereby they consented to revocation of their gaming licenses.

17. Plaintiff later discovered an additional reason for his former attorney's advice, namely, that his attorney was addicted to drugs and his abilities and reasoning were impaired thereby. Moreover, Plaintiff was unaware that his said attorney had violated Nevada Supreme Court Rules regarding entering into business transactions with his clients and this may well have impacted upon said attorney's advice.

18. The Stipulation (Plaintiff's Exhibit 1), among other things, provided that Plaintiff relinquishes his gaming license (as opposed to the stipulations entered into by the LaVecchias with the NGCB whereby they agree to a revocation of their gaming licenses), without admitting the allegations contained in the amended complaint, acknowledges "that he is unsuitable to hold a Nevada gaming, manufacturing or distributing license" and will not attempt to make application for participation in any manner within the gaming industry, within (or in some cases, without) Nevada, agrees to a fine of $275,000.00 together with additional sums and agrees to make payment from the disposition of a commercial realproperty, certain interests in certain promissory notes, interest in the final drop collected by the

NGCB from gaming devices as well as the monetary value of any assets remaining in the American Coin bankruptcy estates, and irrespective of the payment sources mentioned, Plaintiff also agreed to pay $1,000.00 per month from March 1, 1990 for one year, then $2,000.00 per month for the next year and thereafter and $3,000.00 per month which, if not fully paid on or before January 1, 1991, the unpaid balance would bear interest at 12% per annum, and that if not so paid by that date, the fine would be increased to $300,000.00 as well as an additional $25,000.00 for each 12 months period thereafter until the fine was paid in full, provided that if Plaintiff was impaired or impacted from performing the obligation imposed by the Stipulation by either or both of the LaVecchias or the U.S. Bankruptcy Court or some unknown third party, the commencement of the additional fine would be extended to January 1, 1992. The Stipulation also required the complete cooperation of Plaintiff in filing reports and financial records with the NGCB. Plaintiff also waived any rights he might have had against any member of representative of the NGCB and acknowledged that his action in entering into the Stipulation was voluntary.

19. Prior to the time of entering into the Stipulation, Plaintiff owned real property interest, certain intangible rights to monies, business interests and certain inchoate claims having a value of $6,072,000.00, all of which was lost as a direct and proximate result of the Closure and loss of Plaintiff's said licenses resulting from the deprivation of Plaintiff's civil rights as herein alleged.

20. As a direct and proximate result of the deprivation of Plaintiff's civil right and through the resulting denials of due process herein complained of, Plaintiff has suffered

severe anxiety, emotional distress, mental and physical paid and suffering all to Plaintiff's damage in excess of $10,000.00 and subject to proof at time of trial.

21. As a direct and proximate consequence of the Closure, the resulting stipulation, the losses suffered by Plaintiff's and in an effort to restructure their lives, financial affairs and debts, in October 1992, Plaintiffs filed their voluntary petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada, bearing Case No. BK-LV-92-24785 RCJ.

22. In November 1992, the Plaintiffs filed an adversary complaint against the LaVecchias, in the United States Bankruptcy Court for the District of Nevada bearing Adversary No. 922265 and against the NGC for an accounting in Adversary No. 922273, which, after extensive discovery, came to trial before the Honorable Robert Clive Jones, United States Bankruptcy Judge, on May 3, 1995. After approximately two weeks of trial the court made certain findings of fact, conclusions of law and awarded judgment in favor of the Plaintiffs. An essential pillar of the findings, conclusions and judgement, after testimony of several witnesses including that of Mr. Larry Heaton, one of the investigators employed by the NGCB, is the finding that Plaintiff was and is not culpable with respect to the "cheating" engaged in by his partners and did not have any knowledge thereof during the time that the same occurred. A true and correct copy of the Findings of Fact, Conclusions of Law and Judgment are attached hereto, marked Exhibit 2 and are incorporated herein by reference.

23. The LaVecchias appealed the said judgment as well as the awarding of costs, which appeals were denied and the judgment of the Bankruptcy Court affirmed. The time for further appeal has long ago expired and the said judgment is final.

24. In light of circumstances which crystallized after the effective date of said Stipulation, mistake of facts believed by both Plaintiff and alleged by the NGCB be true and which were proven to be false, and resulted directly and proximately from the fraudulent and unlawful conduct on the part of the LaVecchias, newly discovered evidence, the withholding of exculpatory evidence by the NGCB, the final judgment of the federal court, and the inequity of the Stipulation, Plaintiff sought to be relieved of the Order approving said Stipulation by moving the NGC to vacate the same except, in order to assuage the NGCB and NGC, Paragraphs 12, 13 and 15 thereof. Said motion was opposed by Defendants Bible, Ducharme, Harris and the NGCB, represented by Frankie Sue Del Papa.

25. In response to the argument of the NGCB that the NGC had no jurisdiction to hear Plaintiffs motion, Plaintiff argued that the Nevada Gaming Commission had the contractual, statutory and the inherent power to modify and rescind its own orders, including that approving the subject Stipulation; as an elementary principle of law, every judicial body (and in this case a quasi-judicial body) has the inherent power to alter or abrogate its previously made orders, and as contemplated by Paragraph 18 of the Stipulation, the possibility of "altering, amending and modification" thereof.

26. Plaintiff asserted that the foregoing concepts have

been codified within the Nevada Constitution, Nevada Rules of Civil Procedure and the Federal Rules of Civil Procedure. Article One, Section 8, NRCP 60(b) and Fed R Civ. Proc. 60(b) and while not specifically contained within the Nevada Gaming Act, and thereby proceedings before the Nevada Gaming Commission, the principle enunciated above has been a foundation of procedural due process, as set forth in the Nevada Rules of Civil Procedure as well as the Federal Rules of Civil Procedure, which in appropriate part states:

> On motion and upon such terms as are just, the court may relieve a party or party's legal representative from a final judgment, order, or proceedings for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) . . .; (5) . . . or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

27. Plaintiff further urged that since the judgment (namely the order approving the Stipulation to which Plaintiff is a party) remained unsatisfied but had prospective effect, and it was now clearly established by a court of competent jurisdiction that the prior facts upon which the Stipulation was based were shown to be contrary to what was charged by the

NGCB against Plaintiff, it was no longer equitable or just that the Order approving the Stipulation should have any prospective effect, since what occurred following the Order Approving the Stipulation is a credible determination of facts and circumstances which are materially different than those existing at the time of the Stipulation, and which cast a distinctly different light on the disciplinary process instigated by the NGCB. Accordingly, the NGC had the inherent equitable power to modify an order if satisfied that the same had been turned through changing circumstances into an instrument of wrong."

28. Plaintiff further asserted that facts believed to have existed on August 1, 1989 and/or February 22, 1990 were determined in an adversary proceeding before a federal court which has decided those facts to be materially opposite to the said disciplinary charges and reference was made to the Findings of Fact and Conclusions of law which resulted from a hotly contested adversary trial after testimony adduced from witnesses, including the NGCB and while Plaintiff was unable to prove his non-culpability within the restricted time frame, the withholding of vital exculpatory information by the NGCB, the lack of effective legal representation by Plaintiff's former counsel, all within the context of the disciplinary action before the NGC, by virtue of the institution of proceedings by Plaintiff before a federal court, with the determination of actual damages, with discovery processes unavailable under the regulatory and procedural rules of the NGC and the withholding of vital evidence on the grounds of privilege and other legal barriers, and with an adversarial trial in which the previously-licensed parties were represented by counsel and presented both documentary and oral evidence within the strict rules of federal procedure, Plaintiff

established without question his innocence of those facts relied upon by the NGCB in bringing on the disciplinary action.

29. Plaintiff argued that the unfairness of the stipulation, in light of circumstances discovered to have actually existed at the time and that the consent given by him pursuant to Paragraph 13, to wit, that the Stipulation is entered into "freely, voluntarily, and with the advice of counsel" and is not the result of "force, threats, or any type of coercion or duress" was not free consent, but was vitiated by mistake, incompetence and misconduct of counsel and the fraud of the LaVecchias. He further urged that had the evidence which strongly inferred his own innocence been available in February 1990, or had it then disclosed rather than withheld by the NGCB rather than being newly discovered during the federal adversary proceeding, his consent to the Stipulation would not have been given.

30. The NGC ruled that Plaintiffs's motion would be treated in accordance with its rules for evidentiary hearings. Pursuant thereto, Plaintiff requested and the Clerk of the NGC issued a subpoena to Defendant Gerald Cunningham, a former member of the NGCB who was a percipient witness to the proceedings which commenced in 1989 and resulted in the stipulation. In addition, a request for production of documents was served on the NGCB for pertinent documents. In response to both the subpoena and request for production of documents, the NGCB moved to dismiss the motion on the ground of lack of jurisdiction and moved to quash the subpoena and request for production of documents on the grounds of privilege and confidentiality notwithstanding the fact that there was no ongoing investigation nor were there any confidential informants or sources in existence over the

interim six-year period.

31. The NGC set a hearing on the motions of the NGCB to dismiss and quash. At hearing, conducted on July 24, 1996, three of the four members of the NGC voted to allow the evidentiary hearing to be convened, however, after full-blown hearing and after seeking advice of the NGC counsel, and then seeking advice of counsel for the NGCB whom they confused as being their counsel, Defendants Griffin and Lewis changed their votes and determined that there was no jurisdiction. This ruling rendered the motions regarding discovery moot. Plaintiff's motion was denied pursuant to written ruling, dated November 20, 1996, is incorporated herein by reference.

32. At the time of filing of Plaintiff's motion and the proceedings which followed, both the NGC and NGCB were represented by Defendant Frankie Sue Del Papa as Attorney General of the State of Nevada.

IV. FIRST CLAIM FOR RELIEF

33. Plaintiff realleges each and all of the allegations contained in Paragraphs 1 through 32 inclusive and incorporates the same herein by reference.

34. Those persons to whom the duty of constitutional due process must be provided by the NGCB and the NGC, and each of their respective constituent members are those persons making application, applying for registration, a finding of suitability or approval as well as those who have been licensed, registered, found suitable or approved. As to those persons, full and absolute power and authority has been

granted by statute to the Commission to deny, limit, condition, restrict, revoke or suspend the privilege(s) sought or granted. ***NRS 463.1405 § 3.***

35. Constitutional due process includes the right to a fair trial or hearing by an administrative agency pursuing disciplinary charges against a licensee, encompassing the right to effective counsel and the right to be provided with all evidence which negates or tends to negate the charges.

36. Each and all of the charges in the Disciplinary Complaint and Amended Complaint against the Respondents required wilfulness, intent or guilty knowledge in order to constitute a violation of law. No allegations exist in the amended complaint charging that Plaintiff did anything at all to violate the statutes (or regulations), let alone charge that he had the requisite intent to cheat, knowledge of cheating or unlawfulness or did any act to wilfully violate any of the charging statutes. Thus, the allegations asserted against Plaintiff were "shotgun" allegations, that is, simply barefaced allegations without any charging conduct alleged to have been committed or omitted by him.

37. Notwithstanding this apparent defect, the following conduct constitutes denial of due process to Plaintiff by denying him a fair trial (hearing):

a. Plaintiff was represented by "ineffective counsel" in that Plaintiff's former counsel failed to make any inquiry or obtain evidence by way of depositions, affidavits, or otherwise, or from the NGCB relating to Plaintiff's conduct or lack thereof which could be deducted to constitute cheating, fraudulent, intent to violate any statute or regulation

or wilful violation of any statute or regulation. Said former counsel further failed to assert to the NGCB or prove the lack of any guilty knowledge by Plaintiff, or any evidence linking Plaintiff to the unlawful conduct alleged against the LaVecchias. Regardless of the ingestion of mind-altering drugs alleged to have been taken by said counsel, his total failure to act affirmatively to prepare to defend the charges for his client, to make reasonable inquiry and give sound legal advice, when viewed in light of the penalty imposed by the Stipulation, represented complete ineffectiveness of counsel, by reason whereof, Plaintiff's right to constitutional due process has been denied.

b. The NGCB, having a duty to provide to Plaintiff or his counsel any evidence, which tended to negate or did negate the charges alleged by the NGCB, failed and refused to provide the same. Moreover, the NGCB, knowing that Plaintiff was not in violation of any of the statutes or regulations, nevertheless, persisted in prosecuting him to and including February 22, 1990 in order to achieve their goal, to wit, disenfranchising him and causing him to pay a fine for conduct for which he was not responsible either criminally or civilly. By reason of the foregoing misconduct by the NGCB, Plaintiff's right to constitutional due process has been denied.

c. The NGC, having a duty to order the NGCB to provide to Plaintiff or his counsel any evidence, which tended to negate or did negate the charges alleged by the NGCB, refused to order the NGCB to provide the same. Moreover, the NGC, having no evidence to the effect that Plaintiff was not in violation of any of the criminal statutes and/or regulations, nevertheless, allowed the NGCB to persist in prosecuting him in total disregard for Plaintiff's

constitutional due process rights resulting in its order of February 22, 1990 disenfranchising Plaintiff as a licensee and causing him to pay a fine for conduct for which he was not responsible either criminally or civilly. By reason of the foregoing refusal to act by the then members of the NGC, they have acted ultra vires of their sworn constitutional oaths, amounting to gross misconduct in depriving Plaintiff of his right to constitutional due process without any hearing of the charges levied against Plaintiff.

d. The NGCB continued to deny to Plaintiff the production of exculpatory evidence negating or tending to negate his culpability concerning the criminal and civil charges levied by the NGCB against Plaintiff from and after February 22, 1990 until the present time, notwithstanding Plaintiff's motions within the aforesaid federal proceeding and in conjunction with his motion to vacate the said order filed with the NGC in 1996, thereby denying Plaintiff a fair trial of the issues and in derogation of his right to constitutional due process.

e. The NGC continued to deny to Plaintiff his right to obtain exculpatory evidence held by the NGCB negating or tending to negate Plaintiff's culpability concerning the criminal and civil charges levied by the NGCB against Plaintiff from and after February 22, 1990 until the present time, notwithstanding the issuance of subpoena and notice of deposition made and given to the NGCB in order to obtain said evidence by refusing to permit such discovery in derogation of his right to constitutional due process.

f. The NGC further denied Plaintiff any hearing in conformity with his constitutional due process

rights, notwithstanding its conduct after holding (by way of voting) that they had jurisdiction to hear and determine the motion of Plaintiff to vacate the stipulation and order thereon, unlawfully changed their votes and in derogation of their sworn constitutional oaths and duties, and did thereby acted ultra vires of their said oaths and duties and denied Plaintiff any hearing let alone a fair hearing on said motion.

The effect of the foregoing denials of due process resulted in the deprivation of Plaintiff's property right, to wit, his several gaming licenses, without due process of law.

38. Plaintiff was unaware at the time of the making of said stipulation of crucial facts within the knowledge and purview of the NGCB, its individual members named as Defendants herein as well as the Attorney General of the State of Nevada knew of and withheld from Plaintiff credible evidence that established Plaintiff's innocence from the disciplinary action brought by the NGCB before the NGC in 1989, but notwithstanding such knowledge, did, under color of law deprive Plaintiff of his gaming licenses, property rights in violation of the Fifth and Fourteenth Amendments to the United States Constitution as well as Article One, Section 8 of the Nevada State Constitution.

39. The representation of the NGC and the NGCB by the same attorney placed Plaintiff in the position of opposing the attorney representing the NGCB and seeking relief from the NGC represented by the same attorney. This dual representation constitutes a conflict of interest and also represents a denial of due process in that Plaintiff was deprived of a fair hearing resulting in the loss of his gaming licences, a property right, without due process of law.

V. SECOND CLAIM FOR RELIEF

40. Plaintiff realleges each and all of the allegations contained in Paragraphs 1 through 39 inclusive and incorporates the same herein by reference.

41. By refusing to give full faith and credit to the judgment of the United States Bankruptcy Court for the District of Nevada and by failing and refusing to vacate the Stipulation and Order thereon made by the NGC on February 22, 1990, and by their failure to abide by their oaths of office and their constitutionally mandated obligations to Plaintiff, defendants Curran, Lewis, Griffin and Gurrola, acting under color of law, deprived Plaintiff of his gaming licenses, property rights, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article One, Section 8 of the Nevada Constitution.

VI. THIRD CLAIM FOR RELIEF

42. Plaintiff realleges each and all of the allegations contained in Paragraphs 1 through 41 inclusive and incorporates the same herein by reference.

43. By their said conduct, and by failing to enforce the Nevada Gaming Act against others who have produced, manufactured, distributed and operated gaming devices that do not comply with the requirements of the Nevada Gaming Act, and by instituting disciplinary action against Plaintiff, premised upon allegedly criminal conduct, Defendants, Bible, Ducharme, Harris, Cunningham and Roach, acting under color of law and as members of the NGCB selectively enforced the Nevada Gaming Act in violation of their/its

constitutionally and statutorily-imposed duty to enforce said laws guaranteeing every citizens of the United States and of the State of Nevada equal protection of the laws.

VII. FOURTH CLAIM FOR RELIEF

44. Plaintiff realleges each and all of the allegations contained in paragraphs 1 through 43 inclusive and incorporates the same herein by reference.

45. By their said conduct, and by failing to enforce the Nevada Gaming Act against others who have produced, manufactured, distributed and operated gaming devices that do not comply with the requirements of the Nevada Gaming Act, and by instituting disciplinary action against Plaintiff, premised upon allegedly criminal conduct, Defendants, Curran, Lewis, Griffin and Gurrola, O'Reilly, Kenneth R. Gragson and Betty B. Vogler, acting under color of law and as members of the NGC selectively enforced the Nevada Gaming Act in violation of their/its constitutionally-and statutorily-imposed duty to enforce said laws guaranteeing every citizen of the United States and of the State of Nevada equal protection of the laws.

Jury Demand:

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury of all issues so triable.

WHEREFORE, Plaintiff prays judgment against Defendants and each of them as follows:

1. For compensatory damages in the sum of $6,072,000.00 or such other sum or sums as the trier of fact deems reasonable and appropriate to compensate Plaintiff for their financial losses resulting from the deprivation of their civil rights;

2. For compensatory damages in a sum in excess of $10,000.00 as the trier of fact deems reasonable to compensate Plaintiff for their anxiety, emotional distress, pain and suffering resulting from the deprivation of their civil rights;

3. For punitive damages in such sum or sums as the trier of fact deems reasonable and appropriate to punish Defendants and set an example;

4. For reasonable attorneys fees;

5. For costs of suit herein incurred; and

6. For such other and further relief as the court deems just.

DATED: April 16, 1997

Edward S. Coleman, A Professional Law Corp.

by /s/_____
Edward S. Coleman

VERIFICATION

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

FRANK A. ROMANO, being the first duly sworn, deposes and says:

That he is a Plaintiff in the above entitled action, that he has read the foregoing Complaint for Damages for Violation of Civil Rights (42 U.S.C. §1983) and knows the contents thereof, and that the same is true of his own knowledge except for those matters therein stated on information and belief, and as for those matters he believes it to be true.

DATED: April 16, 1997

/s/ _____
FRANK A. ROMANO

Signed and sworn to before me on
April 16, 1997 by Frank A. Romano

/s/_____
NOTARY OFFICER

STATE OF NEVADA
BEFORE THE NEVADA GAMING COMMISSION

[Filed February 22, 1990]

Case No. 89-11

STATE GAMING CONTROL BOARD, Complainant,	)
v.	)
AMERICAN COIN MACHINE COMPANY; AMERICAN COIN ENTERPRISES CO.; RUDOLPH (RUDY) M. LaVECCHIA, Partner, American Coin Enterprises Co.; RUDOLPH LaVECCHIA, Partner, American Coin Machine Company and American Coin Enterprises Co.,; FRANK A. ROMANO, Partner, American Coin Machine Company and American Coin Enterprises Co., Respondents.	)

STIPULATION AND ORDER
PLAINTIFF'S EXHIBIT 1

The Complainant, STATE GAMING CONTROL BOARD ("BOARD"), and the Respondent, FRANK A. ROMANO ("ROMANO"), partner in AMERICAN COIN

ENTERPRISES CO., hereby stipulate and agree as follows:

1. That ROMANO is and has been a licensed partner in AMERICAN COIN ENTERPRISES CO., a licensed slot route operator and manufacturer and distributor, and was at one time a partner in AMERICAN COIN MACHINE COMPANY, however, sometime prior to the issuance of the disciplinary complaint, ROMANO transferred his interest in AMERICAN COIN MACHINE COMPANY to RUDOLPH LAVECCHIA without requisite regulatory approval.

2. That on July 27, 1989, the Nevada Gaming Commission ("Commission") issued an emergency order of suspension pursuant to Nevada Revised Statute 463.311(1) suspending the licenses of AMERICAN COIN MACHINE COMPANY and AMERICAN COIN ENTERPRISES CO. (Hereinafter referred to collectively as "AMERICAN COIN").

3. That on August 1, 1989, the Board filed a complaint for disciplinary action praying for the revocation of the licenses of AMERICAN COIN and the principles of AMERICAN COIN as well as an appropriate administrative fine. An amended complaint for disciplinary action was filed by the Board on January 4, 1990, and this stipulation is intended to resolve the administrative issues in the amended complaint in this matter.

4. That this agreement is made to avoid litigation and economize resources, and does not constitute an admission of liability on the part of any party.

5. That in consideration of the BOARD

recommending that the above-captioned proceeding be dismissed with prejudice with respect to Respondent ROMANO and his respective interests in AMERICAN COIN, ROMANO, without admitting any of the allegations in the complaint for disciplinary action, agrees that he is unsuitable to hold a Nevada gaming, manufacturing or distributing license, and agrees to relinquish all of his existing gaming, manufacturing, and distributing licenses' including that of AMERICAN COIN ENTERPRISES CO., and further agrees that he will not attempt to or make application for participation in any kind of licensed gaming, manufacturing or distributing activities, including those surrounding the manufacture, design, or distribution of associated equipment, including affiliated companies in the State of Nevada or in another jurisdiction in conjunction with any Nevada licensee that has received foreign gaming approval, that he will not acquire an interest in any licensed gaming enterprise or manufacturing or distributing, including manufacture, design or distribution of associated equipment, enterprise including, affiliated companies, in the State of Nevada or in any any other jurisdiction in conjunction with any Nevada licensee that has received foreign gaming approval, or be employed, as a consultant, purveyor or otherwise, by any entity holding or applying for a state gaming, manufacturing or distributing or affiliated company, including the manufacture, design or distribution of associated equipment, in the State of Nevada or in another jurisdiction in conjunction with any Nevada licensee that has received foreign gaming approval. In addition, ROMANO agrees to pay a fine in the amount of Two Hundred and Seventy Five Thousand Dollars ($275,000.00) or any greater amount assessed in accordance with paragraph 6(c) of this stipulation.

6. ROMANO agrees to satisfy the aforementioned fine of $275,000.00, or any grater amount assessed in accordance with paragraph 6(c) of this stipulation, as soon as possible by any reasonable means necessary and available to him including, but not necessarily limited to:

(a) Upon approval of this stipulation by the commission, ROMANO agrees to assign the monetary proceeds derived from the following assets to the BOARD. The monetary proceeds from these assets shall be immediately escrowed. The Board and ROMANO shall agree upon escrow instructions which shall contain language that would require that the funds are to be collected in order to be disbursed to the Board. ROMANO shall make all reasonable efforts to cooperate with Rudolph M. (Rudy) LaVecchia and Rudolph LaVecchia to sell the assets mentioned and collect proceeds hereinafter listed and escrow said funds for the benefit of the Board.

(1) ROMANO'S undivided interest in the commercial property and fixtures located at 1919 Industrial Road (or 1901 Industrial), Las Vegas, Nevada. This property is currently owned by ROMANO and Respondents Rudolph LaVecchia, Rudolph M. (Rudy) LaVecchia and others as individuals and is not part of the partnership estate. The property is currently encumbered only by a first mortgage to Valley Bank of Nevada in the amount of $501,392.54 and has an approximate value of $850,000.00. ROMANO agrees to take reasonable steps to ensure that this property is sold in due course. Further, should the aforementioned property fail to sell on or before January 1, 1991, ROMANO shall submit to the Board on December 15, 1990, a report delineating the efforts that have been made to sell the property, any offers for

sale that have been received, and any offers that have been rejected as well as the reasons for the rejection of the offer.

(2) ROMANO'S undivided interest in promissory notes, security agreements, and the like pursuant to which ROMANO has the right to receive payments from the sale of bar locations previously owned by the three partners of AMERICAN COIN. The locations sold and the approximate balances due to ROMANO are: P-Nuts East (or the property located at 3050 East Desert Inn Road, Las Vegas, Nevada), $51,000.00; Duck Inn (or the property located at 2839 West Sahara Avenue, Las Vegas, Nevada), $80,000.00; Gloria's Station (or the property located at 3720 W. Tropicana, Las Vegas, Nevada), $50,000.00; Mug Shots East (or the property located at 3342 South Sandhill, Las Vegas, Nevada, $50,000.00; Tony L's (or the property located at 4801 South Eastern, Las Vegas, Nevada), $48,000.00; and Mickey's Appetizers (or the property located at 1487 East Flamingo, Las Vegas, Nevada), $120,000.00. Some of the funds receivable are currently being held in escrow by various attorneys, including Paul Corelli, Esq., attorney for the Respondent RUDOLPH LAVECCHIA. ROMANO agrees to take reasonable steps to obtain his share of the accounts receivable, including taking the appropriate civil action to collect the amounts due on the contracts. Further, ROMANO shall immediately establish a trust account with either an escrow company or bank in order to immediately receive the funds receivable, including those funds currently held by ROMANO and other parties, under the above listed contracts and disburse the funds received to the BOARD.

(3) ROMANO'S undivided interest in the final

drop collected by the BOARD from the gaming devices of AMERICAN COIN as well as the monetary value of any asset remaining in the bankruptcy estate when all creditors have been satisfied in order of priority. The remaining portion of the final drop is contained in interest bearing account established by the BOARD, and is currently subject to the jurisdiction of the federal bankruptcy court. The amount deposited in Valley Bank account #014303473 as of February 7, 1990, was $211,345.63.

(i) ROMANO shall take all reasonable steps necessary to ensure the sale of the remaining assets of AMERICAN COIN through the bankruptcy court in order to satisfy all remaining secured and unsecured creditors, including the State of Nevada and the BOARD, including the sale of the AMERICAN COIN gaming devices, in due course. Further, should the Respondents fail to sell the aforementioned gaming devices on or before January 1, 1991, ROMANO shall submit a report to the Board on December 15, 1990, delineating the efforts that have been made to sell the gaming devices, any offers for sale which have been received, and any offers that have been rejected as well as the reason for the rejection of the offer.

(ii) The BOARD shall not, without reason, fail to approve the sale of the aforementioned gaming devices within the existing statutory and regulatory framework as well as pursuant to the provisions of Nevada Revised Statutes 463.650.

(iii) Subsequent to the sale of the aforementioned gaming devices, ROMANO will take all reasonable steps to dismiss the bankruptcy case filed on behalf

of American Coin Enterprises Company, Case No. BK-S-89-2379-LBR, and ensure that the BOARD receives ROMANO'S portion of the final drop and any monetary value of the remaining assets of the bankruptcy estate after satisfaction of the creditors in order of priority, in due course and without encumbrances.

(b) irrespective of the aforementioned sources of capital to satisfy the fine, upon approval of the stipulation by the Commission and commencing on March 1, 1990, ROMANO will remit to the BOARD a payment of $1,000.00 per month for the first twelve months, and should the necessity of payment continue beyond a twelve month period, ROMANO shall remit $2,000.00 per month for the next twelve months, and $3,000.00 per month thereafter.

(c)If payment of the total fine of $275,000.00 is not complete on or before January 1, 1991, ROMANO agrees that interest will accrue on the remaining balance at 12% per annum until payment is complete. ROMANO also agrees that should the total fine not be satisfied by January 1, 1991, that the total fine owed to the Board will increase to $300,000.00 and go on in increments of $25,000.00 for each twelve month period thereafter that the fine is not paid in full. In the event however, that ROMANO is, in the judgment of the Board, blocked, frustrated, impeded or otherwise prevented from performing the obligations imposed upon him by the terms of this stipulation by virtue of the acts or failure to act by any other Respondent in this matter, or the United States Bankruptcy Court and/or some unknown third party, or combination thereof, the commencement date for the increase of the amount of ROMANO's fine to $300,000.00 shall be extended to January 1, 1992. ROMANO shall file a report

and any other financial information necessary or required by the Board on December 15, 1990, setting forth ROMANO'S complete activities with respect to the satisfaction of the imposed fine.

(d) The BOARD will agree to refrain from filing a judgment lien against the personal property of ROMANO, not previously discussed in this stipulation provided that the total fine is satisfied within two (2) years period of time, or by March 1, 1992.

(e) ROMANO agrees that should the BOARD require, he will provide copies of his financial records for periodic review.

(f) The BOARD agrees that upon satisfaction of the fine of $275,000.00 and any interest owing or any other amount owing under paragraph 6(c) of this agreement, if applicable, the BOARD will divest itself of any remaining funds or interests to which ROMANO has granted an interest herein not necessary to satisfy the stated fine and forthwith return ownership and control of said interest to ROMANO.

(g) The BOARD agrees that should the BOARD reach a stipulated settlement with any other Respondent in this matter and that stipulated settlement includes a base fine less that $275,000.00 for any remaining Respondent, the BOARD will reevaluate this stipulated settlement.

(h) The Board agrees that should ROMANO be convicted of any criminal offense arising from the allegations in the complaint for disciplinary action, due to the fact that

ROMANO would be a first time offender, the BOARD would not oppose a probationary sentence.

7. ROMANO and the BOARD recognize, understand and agree that although by the terms of this settlement ROMANO is agreeing to perform certain affirmative actions ROMANO is only a one-third (1/3rd) partner in AMERICAN COIN ENTERPRISES Co., a Nevada general partnership. ROMANO and the BOARD further recognize, understand and agree that pursuant to both the partnership Agreement for said partnership, the provisions of the Uniform Partnership Act as adopted by the State of Nevada and the common law, ROMANO must have the cooperation of at least one of the other Respondent's in order to take or effectuate any affirmative action effecting the partnership or its assets.

8. ROMANO has represented to the Board that he and the remaining RESPONDENTS in this case RUDOLPH LAVECCHIA and RUDOLPH M. (RUDY) LAVECCHIA, are generally at odds with each other and are engaged in an antagonistic relationship as partners. As such, ROMANO agrees that he will make all reasonable efforts to cooperate with the Respondents RUDOLPH M. (RUDY) LAVECCHIA and RUDOLPH LAVECCHIA in order to satisfy ROMANO'S obligations in this stipulation.

9. The BOARD hereby agrees that upon ROMANO'S payment in full of the aforementioned fine of $275,000.00, or any greater amount assessed in accordance with paragraph 6(c) of this stipulation, ROMANO, automatically and without further action, shall be relieved from performing any of the remaining duties, of any type or kind whatsoever, imposed on him by this Stipulation.

10. ROMANO understands and agrees that the BOARD may be relieved of this stipulation after five years of approval of this stipulation if ROMANO fails to perform his obligations under this stipulation as determined by the Commission after notice and hearing.

11. ROMANO fully understands and voluntarily waives his rights to a public hearing on this disciplinary action, to confront and cross-examine witnesses, to contest the charges and allegations, to receive written findings of fact, conclusions of law, and a decision on the merits of the Complaint, and to obtain judicial review of the Commission decision.

12. ROMANO, for himself, his heirs, executors, administrators, receivers trustees, successors, and assigns hereby releases, remises, and forever discharges the BOARD, the Nevada Attorney General, and each of their members, agents, and employees, in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever, known and unknown, in law or equity, that ROMANO ever had, now has, may have, or claims to have against any or all of the persons or entities named in this paragraph, arising out of or by reason of this disciplinary action, or any matter relating thereto.

13. The parties enter this stipulation freely, voluntarily, and with the advice of counsel, this stipulation is not the result of force, threats, or any other type of coercion or duress, and this stipulation is the result of negotiations between ROMANO, ROMANO's attorney, each BOARD member individually, and the BOARD's attorney.

14. The parties agree this stipulated settlement is a judgment that the Board has the ability to collect upon through the civil court system.

15. The parties shall bear their own attorney's fees in connection with this matter.

16. This stipulation shall not be effective until it is approved by the Commission. which approval when obtained shall constitute the concurrence and agreement of the omission to the terms hereto.

17. ROMANO and the BOARD recognize and agree that the Commission has the sole and absolute discretion to determine whether to accept this stipulation. ROMANO and the BOARD hereby waive any right they may have to challenge the impartiality of the Commission to hear and consider the facts and matters embraced in the complaint filed in this matter if the Commission determines in its sole discretion not to accept or approve this stipulation.

18. This stipulation consists of 12 pages and contains the entire agreement of the BOARD and ROMANO and may not be altered, amended, or modified without the express consent of the BOARD and ROMANO.

DATED this 22nd day of February, 1990

FRANK A. ROMANO

/s/_____
Individually, and as a Partner

STATE GAMING CONTROL BOARD

By: /s/_____
WILLIAM A. BIBLE, Chairman

By: /s/_____
GERALD B. CUNNINGHAM

By: /s/_____
THOMAS M. ROCHE, Member

APPROVED:

JEFFREY N. CLONTZ, ESQ.

/s/_____
Attorney for FRANK A. ROMANO

BRIAN McKay
Attorney General

By: /s/_____
Lisa S. Miller
Deputy Attorney General
Gaming Division
Building D, Suite 880
4220 South Maryland Parkway
Las Vegas, Nevada 89158

ORDER

IT IS HEREBY ORDERED.

DATED this 22nd day of February, 1990.

NEVADA GAMING COMMISSION

By: /s/ _____
JOHN F. O'REILLY, Chairman

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing OPPOSITION TO MOTION FOR SUMMARY JUDGMENT is hereby acknowledged this 24th day of February, 1994.

ATTORNEY GENERAL GAMING DIVISION

BY: /s/_____
FRANKIE SUE DEL PAPA by
CHARLOTTE M. MATANANE
Deputy Attorney General
4220 S. Maryland Parkway, #D-801
Las Vegas, NV

COMPTON & KEMP

BY: /s/_____
GARY COMPTON, Esquire
233 South Fourth Street, #201
Las Vegas, Nevada

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

[Filed January 31, 1996]

Case No. BK-LV-92-24785 RCJ

In re:	)
FRANK ROMANO and	)
MARIA ROMANO,	)
Debtors.	)
	)
FRANK A. ROMANO and	)
MARIA ROMANO,	)
Plaintiffs,	)
	)
v.	)
	)
NEVADA STATE GAMING CONTROL	)
BOARD, ET AL	)
Defendants.	)
	)
FRANK A. ROMANO and	)
MARIA ROMANO,	)
Plaintiffs,	)
	)
v.	)
	)
RUDOLPH LA VECCHIA and	)
RUDOLPH M. LA VECCHIA,	)
Defendants.	)
	)

CHAPTER 11
Adversary No.: 922265
Adversary No.: 922273

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

HEARING DATE: 1/17/96
HEARING TIME: 2:30 P.M.

PLAINTIFF'S EXHIBIT 2

The Plaintiff/Debtors' Motion to Certify Judgment for Registration having come on for hearing before this court on January 17, 1996 at the hour of 2:30 P.M. Edward S. Coleman, A Professional Law Corporation, by Gayle Nathan, Esquire having appeared on behalf of Frank and Maria Romano, Debtors/Plaintiffs, herein, and Mark Kemp from the law firm of Compton and Kemp having appeared on behalf of Defendants Rudolph LaVecchia and Rudolph M. LaVecchia, (collectively referred to as "LaVecchias"), the Court having reviewed the motion and there being no opposition, either written or oral to said motion, and being fully advised in the premises makes the following Findings of Fact, Conclusions of Law and Order pursuant to Bankruptcy Rule 7052.

FINDINGS OF FACT

1. Good cause exists for certification and registration of the Judgment entered on September 19, 1995 in Case No. Bk-Lv-24785 RCJ, Adversary No. 922265 and Adversary No. 922273, Consolidated:

A. The Defendants, Rudolph La Vecchia and Rudolph M. La Vecchia are both residents of Hawaii;

B. The La Vecchias fled the state of Nevada in July of 1989;

C. The La Vecchias removed approximately One Million Dollars from the state of Nevada when they fled in July 1989;

D. Defendants have not applied for a stay pending appeal of said Judgement; and no supersedeas bond has been posted;

E. There is an opportunity for property and assets to be located in Hawaii;

CONCLUSIONS OF LAW

2. The Court has jurisdiction pursuant to 28 U.S.C. Sec. 157, and Bankruptcy Rule 7001.

3. 28 U.S.C. 1963 provides for the certification of a judgment when ordered by the court that entered the judgment for good cause shown.

4. Good cause exists to certify the above referenced judgment for the purpose of registering said judgment in other jurisdictions.

ORDER

Based upon the foregoing Findings of Fact and

Conclusions of Law, the Court Orders that:

The Clerk of the United States Bankruptcy Court shall certify the Judgment in Case No. BK-LV-92-24785 RCJ, Adversary Numbers 922265, and 922273, entered on September 19, 1995, as a true and correct copy of the original judgment as it appears of record in the Clerk's office, whenever presented for certification, until such further order of the Court.

Dated this 31st day of January, 1996.

GREGG W. ZIVE

_____

U.S. Bankruptcy Judge

Submitted by
Edward S. Coleman, APLC

/s/_____
Gayle Nathan, Esquire
Nev. Bar No. 004917
Attorney for Debtor/Plaintiffs

Approved/Disapproved

Gary L. Compton
Mark Kemp
Compton and Kemp

By /s/_____
Attorney for Defendants LaVecchia

~~Approved/Disapproved~~ Reviewed

United States Trustee

By: /s/_____
United States Trustees Office
F:\WP51\CLIENT\ROMANO\CERTIFIC.ORD

I certify that this is a true copy of the copy in file.

Attest: /s/_____
Deputy Clerk, Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

[Filed September 18, 1995]

Case No. BK-LV-92-24785 RCJ

In re:	)
FRANK ROMANO and	)
MARIA ROMANO,	)
Debtors.	)
	)
FRANK A. ROMANO and	)
MARIA ROMANO,	)
Plaintiffs,	)
	)
v.	)
	)
NEVADA STATE GAMING CONTROL	)
BOARD, ET AL	)
Defendants.	)
	)
FRANK A. ROMANO and	)
MARIA ROMANO,	)
Plaintiffs,	)
	)
v.	)
	)
RUDOLPH LA VECCHIA and	)
RUDOLPH M. LA VECCHIA,	)
Defendants.	)
	)

CHAPTER 11
Adversary No.: 922265
Adversary No.: 922273

JUDGMENT

Date of Trial: May 3, 1995
Time of Trial: 9:00 A.M.

In accordance with the Findings of Fact and Conclusions of Law filed herein, it is

ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff Frank Romano is awarded declaratory judgment against Defendants Rudolph LaVecchia, and Rudolph M. LaVecchia, jointly and severally, in the amount of any deficiency owing by him to the Nevada Gaming Control Board, for the penalty for which he is obligated to the Nevada Gaming Control Board, pursuant to Stipulation and Order approved by the Nevada Gaming Commission under date of February 22, 1990, that will not be paid out of the assets already turned over by Plaintiff Romano and Defendants LaVecchia to the Nevada Gaming Control Board; and

2. Plaintiffs Frank Romano and Maria Romano are awarded judgment for an accounting as to all of the Defendants personal and all American Coin Enterprises partnership property with which Defendants Rudolph LaVecchia, and Rudolph M. LaVecchia, or either of them, departed from the State of Nevada after July 29, 1989; and

3. Judgment is awarded to Plaintiffs Frank Romano and Maria Romano against Defendants Rudolph LaVecchia and Rudolph M. LaVecchia, jointly and severally, as follows:

a. $6,319,500.00 principal, representing loss of equity in American Coin Enterprises, Automobile Leasing and Rental, Inc., Ben Frank Inc., 2709 Horseshoe Drive, Las Vegas, Nevada, 76 Quail Run Road, Henderson, Nevada, 3105 East Sahara, Las Vegas, Nevada. American Coin Manufacturing, Inc. and 1919 Industrial Road, Las Vegas, Nevada; loss of a one-third interest in the notes for LLR, Inc., dba Duck Inn Bar, Whisle Stop Bar and B.H.B. & G.; loss of one-third of ACE assets skimmed by Defendants; loss of ACE assets converted by Defendants; loss of deposit for the purchase of Sav-Mor Rent-A-Car loss of Certificate of Deposit at Valley Bank; and reimbursement for legal expenses incurred by Plaintiffs in legal matters resulting from Defendants' wrongful conduct; together with interest thereon at the rate of 8.50% from November 12, 1992 to December 30, 1992, 8.00% from January 1, 1993 to June 30, 1994, 9.25% from July 1, 1994 to December 31, 1994, 10.50% from January 1, 1995 until date of entry of judgment; plus

b. $1,000,000.00 for emotional distress, anxiety and public embarrassment, together with interest thereon at the rate of 8.50% from November 12, 1992 to December 30, 1992,

8.00% from January 1, 1993 to June 30, 1994, 9.25% from July 1, 1994 to December 31, 1994, 10.50% from January 1, 1995 until date of entry of judgment; plus

c. $1,000,000.00 for punitive damages, together with interest thereon from date of entry of judgment; plus

4. Post-judgment interest shall accrue on the total principal amount of this judgment at the federal rate per annum from the date of entry of this judgment until paid, plus

5. Costs of suit herein incurred in the sum of $____ ____. The Clerk of Court is ordered to enter the amount of costs when the same have been determined by order for the same supplementing this judgment.

DATED this 18 day of September, 1995

/s/_____
Robert Clive Jones
UNITED STATES BANKRUPTCY JUDGE

Approved/Disapproved as to form and content,
Gary L. Compton
Compton and Kemp
By _____
Attorney for Defendants LaVecchia

Respectfully Submitted:

EDWARD S. COLEMAN
A Professional Law Corporation

by: _____
EDWARD S. COLEMAN
Attorney for Debtors/Plaintiffs

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing Findings of Fact, Conclusions of Law and Judgment is hereby acknowledged this 11th day of August, 1995.

U.S. TRUSTEE
600 South Las Vegas Blvd.
Las Vegas, NV 89101

By: /s/ _____
MARK KEMP, Esquire
233 S. Fourth Street, #201
Las Vegas, NV 89101
F:\WP51\CLIENT\ROMANO\FINALFIN.DNG

I certify that this is a true copy
Attest: /s/_____
Deputy Clerk, Bankruptcy Court

_____

APPENDIX D

_____

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

No. CV-S-97-436-HDM(LRL)

FRANK A. ROMANO, and	)
MARIA ROMANO	) United States Courthouse
Plaintiffs,	) 400 South Virginia Street
	) Reno, Nevada
v.	) August 4, 1997
	) 8:00 a.m.
WILLIAM BIBLE, et al. ,	)
Defendants.	)
_____	)

TRANSCRIPT OF TELEPHONIC HEARING ON DEFENDANTS' MOTION TO DISMISS BEFORE THE HONORABLE HOWARD D. MCKIBBEN, UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: EDWARD S. COLEMAN
Attorney at Law
1900 East Flamingo Road,
#296
Las Vegas, Nevada

FOR THE DEFENDANTS: THOMAS J. RAY
Solicitor General
100 North Carson Street
Carson City, Nevada

Proceedings recorded by mechanical stenography produced by computer-aided transcript

Reported by: Margaret E. Griener, CCR #3, RDR
Official Reporter

RENO, NEVADA, MONDAY, AUGUST 4TH, 1997, 8:00 A.M.

-o0o-

THE CLERK: Case No. CV-S-96-439-HDM (LRL), Frank A. Romano and Maria Romano versus William Bible, et al.

Edward Coleman, you're present on behalf of plaintiff?

MR. COLEMAN: Yes, I am.

THE CLERK: Thomas J. Ray, you're present on behalf of defendant?

MR. RAY: Yes.

THE COURT: This is the time set for the hearing on defendants' motion to dismiss.

You may go ahead, Mr. Ray.

MR. RAY: Thank you, your Honor.

Your Honor, I think the facts that are necessary to determine the motion are very limited and they're not in dispute.

Basically, plaintiff was a gaming licensee. He was an owner/operator of American Coin. I believe he had a partner who was also a licensee in that entity. I believe he was licensed in 1981.

In 1989, an administrative action was instituted against the plaintiff and his partner for allegations relating to gapping of the coin operating machines.

The plaintiffs, prior to the hearing on those allegations, executed a release and stipulation for the revocation of his license. It also included some other matters such as a fine.

The stipulation was signed and approved by the Gaming control Commission on February 22nd, 1990.

On April 26th, 1996, the plaintiff filed a motion before the commission seeking to vacate the stipulation and reinstate his license, among other things. This was denied by the commission on July 24th, 1996.

The plaintiff has thereafter brought this lawsuit claiming that he was denied due process and denied equal protection in connection with the actions that led to his

agreement to surrender his license in 1990, as well as the denial of his motion to set aside that agreement which was brought in '96.

He has named as defendants members of the Gaming Control Board and Commission that were on the board and commission in 1990 as well as the current members of the board and commission.

He did not name the Attorney General, then Attorney General Brian McKay, who was the Attorney General at the time of the events in 1990. He has named the current Attorney General in relation to the events of 1996.

Now, this action again is undisputed, brought seven years after the agreement and order was entered for the revocation of his license.

There are seven independent reasons why this complaint should be dismissed. First of all, the complaint, as it relates to a claim of a denial of due process and a denial of equal protection, failed to state claims as a matter of law, and those reasons, each of those alone is sufficient to subject the complaint to dismissal.

And even if the Court was to find that such causes of actions were available under the circumstances of this case, well then, there are legal defenses which in and of themselves would bar his complaint, namely, the waiver and release of all claims that the plaintiff executed;.

The fact that the statute of limitations has run;

The defendants are entitled to Eleventh Amendment immunity for all of the acts that are alleged were done within their official capacity;

The board and the commission are entitled to absolute immunity by virtue of prosecutorial and judicial immunity;

And, finally, the defendants are entitled to qualified immunity.

I think the best place to start would be to address the two basic claims themselves in my argument that they failed to state a claim.

THE COURT: It's a little hard to hear you. If you could perhaps get Just a little closer to the telephone.

MR. RAY: Yes, your Honor. I'm using the handset. I'll speak up.

THE COURT: Okay. Thank you.

MR. RAY: As to the due process claim, the points and authorities cited in my brief clearly and consistently stand for the proposition that a gaming licensee does not have a property interest in that license.

The cases all indicate that property rights are created by -- are a function of state law, and if the state law does not create a property interest, well, then, there is no due process, no process is due.

In Jacobsen versus Hannafin (phonetic), the Ninth Circuit held there is no property interest in a gaming license and, in so citing that proposition, the Court cited the Nevada Supreme Court in State versus Rosenthal (phonetic) which is a 1977 Nevada opinion where the Court stated, quoting from 463.3 -- .130(2), and I quote,

> "A license is a revocable privilege, and no holder shall be deemed to have acquired any vested rights."

Now, this statute was in effect in 1977 when the Nevada court cited it. Now, since then, the statutes have been recodified, but still -- but that statute was in place in 1977 when the Nevada Supreme Court held that there was no property interest.

Now, in plaintiffs' surreply -- and I have to note that I'm a little bit confused by this surreply document because I don't believe the rules allow for filing such a document. But, in any event, in his surreply, he points out and argues that this statute was enacted in 1991 and should not apply to his client.

Now, again, the statute was recodified, but clearly it was in existence, and going back at least as far as 1977, the statute was in place. It certainly applied and was in effect prior to any issuance of any license to the plaintiff.

As to the precedents which were cited in my brief which were clearly on point, plaintiff argues that they should not be followed because they are inconsistent with the United States Supreme Court decision in Berry (phonetic).

Now, in Berry, the Court started out gain by noting that under the New York laws related to racing, the New York laws clearly provided for a property interest in that license and therefore, having found that, it took the next step in addressing the question of what process is due.

So the Berry case is not inconsistent with the authorities which all stand for the proposition that there is no property interest in a gaming license.

Now, plaintiff also points out that the cases -- it should be a different circumstance wherein that he at one time held a license. Well, I disagree with that. Again, the statute clearly points out it's a revocable privilege and no holder shall be deemed to have acquired a right to any licence.

Now, in the Thomas versus Bible case which I cited in my opening points and authorities, the Court noted that any process that is given or any property rights and processes giving it is clearly a function of the Nevada Legislature, and, pursuant to the Tenth Amendment to the Constitution, that is a matter clearly reserved to the states so any process is a function of Nevada legislative law. It's a function of the state court determinations. It is not a function of a federal review.

Now, the plaintiff took no action in state court regarding any of these allegations. So, clearly, as a matter of law, there is no due process claim and those allegations or those causes of action should be dismissed.

Next would be the two causes of action for equal protection. A claim of equal protection, when it relates to an allegation of discriminatory enforcement, must stem from an

accusation that the discriminatory enforcement stems from some unconstitutional motive. In other words, it was based upon either a grievance relating to race or religion or done in an attempt to prohibit or infringe on someone's constitutional rights.

Now, the complaint does not make any allegations of those types whatsoever. The complaint alleges simply that the defendants selectively enforce the gaming laws by only enforcing them against some violators and not others.

That is not a constitutional suspect category, and that alone would subject it to dismissal for, again, it does not state a claim for violation of equal protection.

Now, again in plaintiff's surreply, he argues for the first time that this -- these administrative actions were brought in an effort to prevent him from exercising his constitutional rights.

Well, nowhere is it shown what constitutional rights the plaintiff was using or acting at the time of the administrative complaint. His allegations were that once the proceedings started, his attorney was incompetent, he did not actually do it, it was his partner, and they denied my motion for discovery.

Those are not acts that were taking place prior to the initiation of the action. They were not -- the motivation was clearly not those acts, so there is no basis for an equal protection claim.

Now, even if the Court were to find that there is an

arguable claim for due process or equal protection, well then, there are numerous defenses that, as a matter of law, would bar these actions.

The first one would be the issue of waiver and release. Now, at the time the plaintiff entered into the stipulation for revocation of his license, he specifically agreed to release any and all claims that he may have against any of the parties to this lawsuit. He also acknowledged that he did so freely and voluntarily and under the advice of counsel.

Now, the United States Supreme Court, in the case of Town of Newton versus Rummery (phonetic), specifically held that it does not violate policy or public policy to allow for waiver of claims in the context of a 1983 case.

Now, there's also been held by the Ninth Circuit in an identical context to this that it is proper or valid to have a waiver or release of claims in the context of a 1983 suit.

THE COURT: I think I understand all of your defenses. I have other hearings at 8:30. If you want to reserve just a few minutes, unless there's something else you want to --

MR. RAY: That would be fine, your Honor. I would reserve for any reply.

THE COURT: All right. Thank you very much, Mr. Ray.

Mr. Coleman?

MR. COLEMAN: Thank you, your Honor. This is Ed Coleman.

I think that the facts stated are incorrect. We set forth the facts, oh, probably three or four times in our pleadings, and perhaps the Court is familiar with those, but just a couple of salient points.

The American Coin consisted of three partners, two of whom were named Lavecchia and one was Mr. Romano. The action brought in 1989, as of August 1, charged criminal as well as civil violations of the gaming statutes.

Eventually, through the course of 1989 into February of 1990, discovery efforts were made and they were frustrated and obfuscated by the Attorney General's office, the Nevada Gaming Control Board, to prevent, based upon privilege and confidentiality, the disclosure of information which is exculpatory to Mr. Romano.

Based upon the facts we've set forth and I won't repeat, the pressures of counsel being in an unusual situation which I won't repeat, the fact that there was this evidence that was stacked against Romano based upon his vicarious liability for the criminal conduct of his partners as alleged in the charging allegations, he succumbed to the pressure of entering into this stipulation.

THE COURT: Well, his recourse, basically, is to go before the board again, isn't that true, if he wants to secure his license?

MR. COLEMAN: Right. What he did -- yes, your

Honor.

What he did was he was a licensee, and what we're complaining about is that his license was taken away from him without a fair hearing.

THE COURT: Well, he stipulated to have his license taken away from him.

MR. COLEMAN: That's right, but he stipulated under --

THE COURT: He signed an agreement.

MR. COLEMAN: You're right, he stipulated under circumstances, though, that we think are sufficient to bring the matter up again and to vitiate the --

THE COURT: Well, you should bring it up to the board, shouldn't you?

MR. COLEMAN: We did. We did.

What happened was that in 1992 we filed a civil action in the bankruptcy court before Judge Jones and had a full hearing for almost two weeks at which findings were made showing that Mr. Romano was totally exculpated from any of the liability charged to his partners.

THE COURT: And his former partners were --

MR. COLEMAN: Even during that proceeding, the Nevada Gaming Control Board and the Attorney General

refused, on the basis of confidentiality and privilege, to produce any of the information.

And it was only when we went to trial and we were able to elicit evidence that showed that the Gaming Control Board had withheld evidence, and were able to prove that there was no culpability on the part of Romano, and there were specific findings to that effect.

THE COURT: Were those findings contested by his former partners?

MR. COLEMAN: Pardon?

THE COURT: Were those findings contested by his former partners?

MR. COLEMAN: Yes,. your Honor.

And also we brought an action against the Gaming Control Board as well for various things, including accountings, and even in those hearings for over a year I wouldn't get one piece of evidence from them except that they went to a special master, to Magistrate Judge Johnston, for hearing, and we got four pages of redacted forms. That was the only evidence we could uncover in that proceeding.

So, finally, after we got the finding of the federal court, we went into -- back to the Gaming Commission and said this was a bad thing that was done, it was an error, it was a mistake, it was based upon an unfair hearing.

There was no fair hearing, the quasi-judicial body and

the individuals involved should have allowed evidence to be given to Mr. Romano to show that he was not liable for these criminal as well as civil violations, they refused to do so, and we now ask you to set aside that order approving the stipulation.

And they said, oh, no, we don't have any Jurisdiction, and even that was done in a manner which is probably violative with the constitutional process because three members of the Gaming Commission stated in open hearing before the commission that there was jurisdiction, and then when Chairman Curran (phonetic) said, well, he didn't think there was, two of the members changed their votes, and we were then foreclosed from proceeding further before the Gaming Commission.

So we did go back to the Gaming Commission, and we were essentially told that there was no jurisdiction, and that was the genesis of our filing this civil rights action.

But we've set this out and I don't want to argue the law. The law, I think, is relatively clear, notwithstanding the citations given by the opposition. The cases cited are primarily Nevada State Court cases. One case by Judge Foley is a District Court case.

But the U.S. Supreme Court and the Ninth Circuit have essentially said that once you have a license, you have a property right, and that property right can't be taken away from you without a fair hearing, that is, that's the due process.

And we contend we didn't get a fair hearing in 1989

or 1990, and we have a Federal Court ruling that says we didn't get a fair hearing in effect.

And now the Nevada Gaming Commission and the members thereof who have constitutional obligations have refused to recognize and give full faith and credit to the ruling of the Federal court as to the culpability or nonculpability of Mr. Romano.

So we had no other recourse but to bring this action. But there is a property right that has been taken away from him as set forth in all of the cases cited, especially the Berry versus Barchi (phonetic) case.

There are a whole litany of cases that we studied, your Honor, which show that the -- and the Ninth Circuit has recognized, of course, the U.S. Supreme Court decisions so we think there was a property right taken way.

And the case of Hannafin that was cited by the opposition is a case in which the license had lapsed and there was, in effect, a new application for a license. In all of the cases holding no property right -- hold that there was no property right in an applicant for a license.

Here's a case where we have a difference between all of those cases and our case, to wit, that we had a licensee who had a property right, it wasn't an applicant, it was somebody who held the license.

THE COURT: Well, the licensee voluntarily relinquished it when he filed the stipulation. Now --

MR. COLEMAN: That's right.

THE COURT: -- what was it that the commission did that caused him to execute that stipulation which he wasn't doing under his own free will?

MR. COLEMAN: Well, that's what we contend, your Honor, and that's a matter, of course, as to proof.

The case that the opposition cited, Town of Newton versus Rummery, we've cited in our surreply. Justice O'Connor stated that quite easily -- that the risk and expense of a criminal trial can easily intimidate even an innocent person whose civil constitutional rights have been violated, and --

THE COURT: Why did you wait so long to file the lawsuit then?

MR. COLEMAN: Because, your Honor, we had the bankruptcy proceeding which intervened, and during that proceeding, of course, all other matters are truly stayed.

THE COURT: Counsel, you didn't have to wait for the bankruptcy proceeding if you felt that some rights had been violated, some due process rights.

MR. COLEMAN: We felt they had been violated, your Honor, but it wasn't until the trial before the bankruptcy court that it became clear by evidence that the rights had been violated.

For example, there was a letter which came out at trial that was written by Larry Heaton (phonetic) of the Nevada Gaming Control Board to the Metropolitan Police Department which said, oh, we didn't have any liability asserted against Frank Romano. That letter wasn't even available to us until the time of the trial.

THE COURT: Okay. If you have anything else, I think I understand your position. Just one more minute.

MR. COLEMAN: Your Honor, I think we've truly set forth our case, and we -- I think we have responded accurately to the motion to dismiss, and I certainly would appreciate your giving yourself and ourselves an opportunity to review all the cases we've cited because they're really important.

THE COURT: Thank you very much, Mr. Coleman.

Mr. Ray, a brief response?

MR. RAY: Yes, your Honor. Mr. Ray.

I just would like to respond to one thing. Counsel makes much ado about the bankruptcy proceedings. There was nothing in that bankruptcy proceeding that in any way impacted or affected any order or action of the Nevada Gaming Commission.

What the purpose of that action was, and what the bankruptcy Judge allowed was, is that plaintiff was not the active tort feasor, if you will, his partner was, and the bankruptcy court allowed plaintiff reimbursement from the act of tort feasor, his partner.

It in no way set aside that fine that was imposed and agreed to, and all it indicated was is that he should be reimbursed for that.

And I would simply sum up again, if there was anything that he's claiming was duress, it had nothing to do with my clients.

I would submit it, your Honor.

THE COURT: The only other question I have is, has there been any discovery in this case?

MR. RAY: Has there been discovery?

THE COURT: Yes.

MR. RAY: No, your Honor.

MR. COLEMAN: None whatsoever, your Honor.

THE COURT: Mr. Ray, do you think that the case warrants any form of discovery?

MR. RAY: Not based upon the defenses raised, your Honor.

THE COURT: All right. Thank you very much.

In deciding a motion to dismiss, the Court accepts as true all material allegations in the complaint, and I'm required, of course, to construe them in the light most favorable to the plaintiff.

It should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him to relief.

Here, the first issue is whether Romano's due process rights were violated by the relinquishment of his gaming license and by the NGC and NGCB refusing to give full faith and credit to the bankruptcy court's decision. That's basically what this case is about.

Deciding that there is merit to this claim requires a finding that a gaming license constitutes a valid property interest.

A reasonable expectation of entitlement is determined by the language of the statute, and a property interest as a benefit protected by the due process clause results from a legitimate claim of entitlement created and defined by an independent source such as a state or federal law.

That expectation of entitlement is determined by the language of the statute, that is, if the gaming statute contains mandatory language that restricts the discretion of the commission to deny licenses to applicants who claim to meet minimum eligibility requirements, a protected property interest may be created.

Chapter 463 of the Nevada Revised Statutes outlines the general provision of the Nevada Gaming Control Act which governs the licensing and control of gaming in the state.

The gaming statute states that no applicant for a

license or other affirmative approval has any right to a license or the granting of the approval sought. Any license issued or other commission granted pursuant to the provisions of this chapter is a revocable privilege, and no holder acquires any rights therein or thereunder. Further, the NJC reserves the right to deny, revoke, suspend, condition, or limit any existing license if and when renewal is sought.

The Ninth Circuit has noted it is difficult to conceive of language which could more forcefully leave a decision to the unbridled discretion of an agency.

And that's set forth in Parks v Watson, 716 F.2d, 646 at 657, a 1983 decision.

The Ninth Circuit in that decision upheld the NGC's power to deny plaintiff's application 'for a gaming license as long as its discretion was reasonable, holding that an interest in a gaming license is not so fundamental as to warrant constitutional protection apart from its status under state law.

Clearly, the wide discretion resting with the Gaming Commission negates the claim to a protectible property interest created by the state.

Now, I recognize that Mr. Romano has attempted to draw a distinction between the Jacobsen decision and this case by contending that, while plaintiff in Jacobsen was treated as a first-time applicant, Romano was not applying for a new gaming license.

Romano maintains that since he already was the holder of a gaming license, that a property right had been obtained,

and he cites several Supreme Court cases in support of that proposition according to Romano.

Those cases involved the constitutionality of pre and post revocation hearings to which the holder of the license were entitled since their licenses had been previously determined to be valid property interests.

Those cases are distinguishable when compared to the facts of this case. Here Romano voluntarily signed a stipulation relinquishing his gaming license which had not been deemed a vested property interest.

In addition, Romano has not pointed to any precedent in which either a gaming license was deemed a vested property interest or the constitutionality of the Nevada gaming statute was successfully challenged.

Licensed gaming is a privilege conferred by the state and does not carry with it rights inherent in useful trades and occupations.

In Jacobsen, the Ninth Circuit concluded that since the Gaming Control Act unmistakably committed the substance of licensing decisions to the discretion of the commission, the procedural guarantees provided for in the act did not enhance an applicant's expectation of obtaining a license to a degree sufficient to create a protectible interest.

And, finally, there is no authority to support Romano's contention that the NGC and the NGCB are required to vacate a stipulation voluntarily entered into by Romano by giving full faith and credit to a bankruptcy

decision that found that Romano should be indemnified from a financial standpoint by his business partners.

He has failed to allege facts sufficient to establish that the circumstances surrounding the relinquishment of his gaming license violated his constitutional rights to procedural due process.

Addressing the equal protection argument, that clause, the Court states that no state shall deny to any person within its Jurisdiction the equal protection of the laws. Unless a classification tramples fundamental personal rights or implicates a suspect classification to meet a constitutional challenge, the law in question needs only some rational relation to a legitimate state interest.

Further, a discriminatory purpose is never presumed. What must be established is that the government deliberately discriminated selection for prosecution and has been invidious or in bad faith, that is, based upon an unjustifiable standard such as race, religion or the desire to prevent the exercise of a constitutional right.

None of these have been alleged in the pleadings. In an attempt to make out a claim of unconstitutional bias, a plaintiff must overcome a presumption of honesty and integrity on the part of the decision makers. There is absolutely no allegation here that supports in the pleadings a contention that equal protection rights have been violated.

Now, with respect to the waiver, there is no question, and Mr. Romano concedes, that he voluntarily signed the stipulation relinquishing his gaming license. His contention in

the pleadings, as I read them, is that his attorney misled him into doing that. That's not sufficient to overcome the waiver and release.

With respect to the statute of limitations, the order formalizing the stipulation which Romano signed was entered on February 22, 1990. He did not file his complaint until April 16th, 1997, more than seven years later.

He contends that the statute of limitations should toll from the date of the bankruptcy court decision in 1995 since the defendants withheld relevant evidence, and his previous attorney had an addiction, and his innocence in the gapping of the American Coin was established at that point.

Whether or not there's a tolling in Section 1983 cases is determined by state law which is not inconsistent with federal policy.

The statute of limitations applicable to the 1983 claims is two years under Nevada Statute 11.190(4)(e). The relevant inquiry is whether Romano discovered the above facts within the two-year statute of limitations in order to constitute notice of the claim.

Viewing the allegations in the light most favorable to Romano, the Court determines that none of the factors alleged in the pleadings were discovered by Romano within the two-year statute of limitations period. They were all either discovered or discoverable prior to that date.

Romano has alleged that the NGC and NGCB have withheld relevant information from him since he first signed

the stipulation. He claimed he discovered his previous attorney was using drugs around the time he signed the stipulation, and he's maintained his innocence in gapping all along.

There's no question that all of these matters were either discovered or discoverable long before two years preceding the filing of the action here. Accordingly, the Court finds that the action is barred by the statute of limitations.

The Eleventh Amendment prohibits plaintiff from bringing suits against the state, and Section 1983 does not abrogate this immunity. As agencies of the state, the NGC and the NGCB are shielded from liability under the Eleventh Amendment. Romano's action is clearly against the individuals in their official capacities. He's failed to allege any facts that support his contention that any of the defendants were acting ultra vires.

Finally, with respect to absolute immunity, the district has granted absolute immunity to past and present members to NGC and NGCB in similar suits alleging 1983 violations. The rationale behind such holdings is that the discretion and Judgment of these officials in deciding matters of public importance must be affected if their immunity from damages arising from these decisions was less than complete.

Even intrusions by the state courts in licensing decisions are unauthorized except in the rarest of circumstances. The individual defendants named by Romano are protected by absolute immunity.

And, finally, the Court finds that Romano's rights to

due process and equal protection were not violated. He's alleged no facts that might demonstrate that the defendants, conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known.

Consistent with previous Section 1983 decisions in this district, the members of the NGC and NGCB are also entitled to qualified immunity.

Construing the facts in the light most favorable to plaintiff, the Court finds that Romano has failed to allege facts sufficient to support a cause of action under Section 1983.

Accordingly, the motion to dismiss is granted. It is so ordered.

Thank you very much, counsel.

MR. RAY: Thank you, your Honor.

MR. COLEMAN: Your Honor? Will we have a written -- that written decision?

THE COURT: This will constitute the decision of the Court. We can provide you with a copy of this decision and the reporter can prepare one for you if you wish to have one.

MR. COLEMAN: Yes, sir. I'd appreciate it very much.

-o0o-

I certify that the foregoing is a correct transcript from

the record of proceedings in the above-entitled matter.

/s/_____
Margaret E. Griener, CCR #3, RDR
Official Reporter

Date: August 30, 1997

APPENDIX E

NEV. REV. STAT. ANN. § 463.312 (1998)
printed in FULL format.

NEVADA REVISED STATUTES ANNOTATED
Copyright (c) 1986-1998 by LEXIS Law Publishing, a division of Reed Elsevier Inc. and Reed Elsevier Properties Inc. All rights reserved.

*** THIS SECTION INCLUDES ACTS OF THE SIXTY-NINTH (1997) SESSION ***

*** (ANNOTATIONS THROUGH 945 P.2D 778) ***

TITLE 41. GAMING; HORSE RACING; SPORTING EVENTS

CHAPTER 463.
LICENSING AND CONTROL OF GAMING

GAMING
DISCIPLINARY ACTIONS

Nev. Rev. Stat. Ann. § 463.312 (1998)

§ 463.312. Contents and service of complaint; answer; effect of failure to answer or appear; notice of hearing

1. The complaint referred to in NRS 463.310 and 464.080 must be a written statement of charges which must set forth in ordinary and concise language the acts or

omissions with which the respondent is charged. It must specify the statutes and regulations which the respondent is alleged to have violated, but must not consist merely of charges raised in the language of the statutes or regulations.

2. Upon the filing of the complaint, the commission shall serve a copy of the complaint upon the respondent either personally, or by registered or certified mail at his address on file with the commission.

3. Except as provided in subsection 4, the respondent must answer within 20 days after the service of the complaint. In his answer the respondent:

(a) Must state in short and plain terms his defenses to each claim asserted.

(b) Must admit or deny the facts alleged in the complaint.

(c) Must state which allegations he is without knowledge or information to form a belief as to their truth. Such allegations shall be deemed denied.

(d) Must affirmatively set forth any matter which constitutes an avoidance or affirmative defense.

(e) May demand a hearing. Failure to demand a hearing constitutes a waiver of the right to a hearing and to judicial review of any decision or order of the commission, but the

commission may order a hearing even if the respondent so waives his right.

4. Failure to answer or to appear at the hearing constitutes an admission by the respondent of all facts alleged in the complaint. The commission may take action based on such an admission and on other evidence without further notice to the respondent. If the commission takes action based on such an admission, it shall include in the record which evidence was the basis for the action.

5. The commission shall determine the time and place of the hearing as soon as is reasonably practical after receiving the respondent's answer. The commission shall deliver or send by registered or certified mail a notice of hearing to all parties at least 10 days before the hearing.

§ 463.313. Hearings: Procedure; use of affidavit

1. At all hearings before the commission other than investigative hearings:

(a) Oral evidence may be taken only upon oath or affirmation administered by the commission.

(b) Every party has the right to:

(1) Call and examine witnesses;

(2) Introduce exhibits relevant to the issues of the case, including the transcript of testimony at any investigative hearing conducted by or on behalf of the board or the commission;

(3) Cross-examine opposing witnesses on any matters relevant to the issues of the case, even though the matter was not covered in a direct examination;

(4) Impeach any witness regardless of which party first called him to testify; and

(5) Offer rebuttal evidence.

(c) If the respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted and is sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

(e) The parties or their counsel may by written stipulation agree that certain specified evidence may be admitted even though such evidence might otherwise be subject to objection.

2. The commission may take official notice of any generally accepted information or technical or scientific matter within the field of gaming, and of any other fact which may be judicially noticed by the courts of this state. The parties must be informed of any information, matters or facts so noticed, and must be given a reasonable opportunity, on

request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the commission.

3. Affidavits may be received in evidence at any hearing of the commission in accordance with the following:

(a) The party wishing to use an affidavit must, not less than 10 days before the day set for hearing, serve upon the opposing party or counsel, either personally or by registered or certified mail, a copy of the affidavit which he proposes to introduce in evidence together with a notice as provided in paragraph (c).

(b) Unless the opposing party, within 7 days after such service, mails or delivers to the proponent a request to cross-examine the affiant, his right to cross-examine the affiant is waived and the affidavit, if introduced in evidence, must be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made in accordance with this paragraph, the affidavit may be introduced in evidence, but must be given only the same effect as other hearsay evidence.

(c) The notice referred to in paragraph (a) must be substantially in the following form: The accompanying affidavit of (here insert

name of affiant) will be introduced as evidence at the hearing set for the ___ day of _____, 19_ (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify the undersigned that you wish to cross-examine him. To be effective your request must be mailed or delivered to the undersigned on or before 7 days from the date this notice and the enclosed affidavit are served upon you.

(Party or Counsel)
(Address)

§ 463.310. Investigations and initiation of complaints by board; proceedings before commission; powers and duties of commission

1. The board shall make appropriate investigations:

(a) To determine whether there has been any violation of this chapter or chapter 462, 464, 465 or 466 of NRS or any regulations adopted thereunder.

(b) To determine any facts, conditions, practices or matters which it may deem necessary or proper to aid in the enforcement of any such law or regulation.

(c) To aid in adopting regulations.

(d) To secure information as a basis for recommending legislation relating to this chapter or chapter 462, 464, 465 or 466 of NRS.

(e) As directed by the commission.

2. If, after any investigation the board is satisfied that a license, registration, finding of suitability, pari-mutuel license or prior approval by the commission of any transaction for which the approval was required or permitted under the provisions of this chapter or chapter 462, 464 or 466 of NRS should be limited, conditioned, suspended or revoked, it shall initiate a hearing before the commission by filing a complaint with the commission in accordance with NRS 463.312 and transmit therewith a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board.

3. Upon receipt of the complaint of the board, the commission shall review it and all matter presented in support thereof, and shall conduct further proceedings in accordance with NRS 463.3125 to 463.3145, inclusive.

4. After the provisions of subsections 1, 2 and 3 have been complied with, the commission may:

(a) Limit, condition, suspend or revoke the license of any licensed gaming establishment or the individual license of any licensee without affecting the license of the establishment;

(b) Limit, condition, suspend or revoke any registration, finding of suitability, pari-mutuel license, or prior approval given or granted to any applicant by the commission;

(c) Order a licensed gaming establishment to keep an individual licensee from the premises of the licensed gaming establishment or not to pay the licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment; and

(d) Fine each person or entity or both, who was licensed, registered or found suitable pursuant to this chapter or chapter 464 of NRS or who previously obtained approval for any act or transaction for which commission approval was required or permitted under the provisions of this chapter or chapter 464 of NRS:

(1) Not less than $25,000 nor more than $250,000 for each separate violation of any regulation adopted pursuant to NRS 463.125 which is the subject of an initial or subsequent complaint; or

(2) Except as otherwise provided in subparagraph (1) of this paragraph, not more than $100,000 for each separate violation of the provisions of this chapter or chapter 464 or 465 of NRS or of the regulations of the commission which is the subject of an initial complaint and not more than $250,000

for each separate violation of the provisions of this chapter or chapter 464 or 465 of NRS or of the regulations of the commission which is the subject of any subsequent complaint.

All fines must be paid to the state treasurer for deposit in the state general fund.

5. For the second violation of any provision of chapter 465 of NRS by any licensed gaming establishment or individual licensee, the commission shall revoke the license of the establishment or person.

6. If the commission limits, conditions, suspends or revokes any license or imposes a fine, or limits, conditions, suspends or revokes any registration, finding of suitability, pari-mutuel license or prior approval, it shall issue its written order therefor after causing to be prepared and filed its written decision upon which the order is based.

7. Any such limitation, condition, revocation, suspension or fine so made is effective until reversed upon judicial review, except that the commission may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

8. Judicial review of any such order or decision of the commission may be had in accordance with NRS 463.315 to 463.318, inclusive.

§ 463.1405. Investigation of qualifications of applicants and observation of conduct of licensees and other persons by board; absolute powers of board and commission

1. The board shall investigate the qualifications of each applicant under this chapter before any license is issued or any registration, finding of suitability or approval of acts or transactions for which commission approval is required or permission is granted, and shall continue to observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations.

2. The board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any license, registration, finding of suitability or approval, the suspension or revocation of any license, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause deemed reasonable by the board.

3. The commission has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any license, registration, finding of suitability or approval, or fine any person licensed, registered, found suitable or approved, for any cause deemed reasonable by the commission.

§ 463.140. General powers and duties of board and commission

1. The provisions of this chapter with respect to state gaming licenses and manufacturer's, seller's and distributor's licenses must be administered by the board and the commission, which shall administer them for the protection of the public and in the public interest in accordance with the policy of this state.

2. The board and the commission and their agents may:

(a) Inspect and examine all premises wherein gaming is conducted or gambling devices or equipment are manufactured, sold or distributed.

(b) Inspect all equipment and supplies in, upon or about such premises.

(c) Summarily seize and remove from such premises and impound any equipment, supplies, documents or records for the purpose of examination and inspection.

(d) Demand access to and inspect, examine, photocopy and audit all papers, books and records of any applicant or licensee, on his premises, or elsewhere as practicable, and in the presence of the applicant or licensee, or his agent, respecting the gross income produced by any gaming business, and require verification of income, and all other matters affecting the enforcement of the policy or any

of the provisions of this chapter.

(e) Demand access to and inspect, examine, photocopy and audit all papers, books and records of any affiliate of a licensee whom the board or commission knows or reasonably suspects is involved in the financing, operation or management of the licensee. The inspection, examination, photocopying and audit may take place on the affiliate's premises or elsewhere as practicable, and in the presence of the affiliate or its agent.

3. For the purpose of conducting audits after the cessation of gaming by a licensee, the former licensee shall furnish, upon demand of an agent of the board, books, papers and records as necessary to conduct the audits. The former licensee shall maintain all books, papers and records necessary for audits for 1 year after the date of the surrender or revocation of his gaming license. If the former licensee seeks judicial review of a deficiency determination or files a petition for a redetermination, he must maintain all books, papers and records until a final order is entered on the determination.

4. The board may investigate, for the purpose of prosecution, any suspected criminal violation of the provisions of this chapter, chapter 205 of NRS involving a crime against the property of a gaming licensee, NRS 207.195 or chapter 462, 463B, 464, 465 or 466 of NRS.

5. The board and the commission or any of its members has full power and authority to issue subpoenas and

compel the attendance of witnesses at any place within this state, to administer oaths and to require testimony under oath. Any process or notice may be served in the manner provided for service of process and notices in civil actions. The board or the commission may pay such transportation and other expenses of witnesses as it may deem reasonable and proper. Any person making false oath in any matter before either the board or commission is guilty of perjury. The board and commission or any member thereof may appoint hearing examiners who may administer oaths and receive evidence and testimony under oath.